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CHANGES IN LEVISEES' DAKOTA CODES,

AS EFFECTED BY THE

ACTS OF THE LEGISLATURE OF 1885,

ARRANGED WITH REFERENCE TO THE CHAPTER
AND SECTION AMENDED.

EDITED BY
ROBERT DESTY.

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TERRITORIAL GOVERNMENT.

CHAPTER I.

PREFATORY.

The area of Dakota territory forms a part of that domain which was ceded by France to the United States by treaty. The lower Mississippi valley, over which France exercised its sovereignty by right of discovery in 1673, was called "The Province of Louisiana," of which New Orleans was the capital, and was governed by officials sent from Paris, without any charter. That portion of the province lying east of the Mississippi river, including the city of New Orleans, was ceded by France to Spain November 3, 1762, but was retroceded to France by the treaty of San Ildefonso, October 1, 1800, and the cession confirmed by the treaty of Madrid, March 21, 1801. The treaty of cession to the United States of the entire province of Louisiana, including its dependencies, to the United States, was laid before congress by President Jefferson at a session called by him for the seventeenth of October, 1803, and was ratified at Washington, October 21, 1803, and the commission appointed under it took formal possession, December 20, 1803. Subsequent to the discovery of Louisiana, Sieur De La Salle, from Canada, had sailed down the Mississippi to the gulf of Mexico in 1682, and discovered Matagorda bay, on the coast of Texas. He returned to Canada by the same route and proceeded to France, where he fitted out an expedition and planted a colony there in 1686, and although the Spanish viceroy in Mexico sent an armed expedition to take possession of that country, yet France never ceded her claim to Texas, and it was included in the cession of Louisiana to the United States as one of its dependencies. Controversy as to the title, however, was continued until closed by the treaty of Guadalupe Hidalgo, in 1848.

By the session of Louisiana and its dependencies, the United States acquired title to all that vast region lying within what is known as Louisiana proper, and extending along the west bank of the Mississippi up to the Canada line, and westward indefinitely to the Pacific ocean. It included Arkansas, Missouri, Kansas, and Iowa, besides the more remote subdivisions, which still remain territories; as well as portions of Colorado, Minnesota, and Nebraska. During their existence as territories of the United States, the boundaries and extent of these subdivisions of the

Louisiana cession underwent frequent changes, as the formation of permanent states progressed, and Dakota became successively a part of the territories of Michigan, Wisconsin, Minnesota, and Nebraska; and after the admission of these states into the Union, the territory not embraced in their limits was named Dakota, from the associated tribe of Indians known among themselves as the Dakotas, and by the French as the Sioux. By successive treaties with these and other Indian tribes, nearly all the lands lying east of the Missouri and west of the Mississippi has been ceded to the United States, a portion of which now constitutes the territory of Dakota.

CHAPTER II.

ORGANIC LAW.

The following includes those sections of the Revised Statutes of the United States, and of acts passed subsequently to the revision, bearing upon the territories, and which refer to Dakota:

§ 1900. **Boundaries.** All that part of the territory of the United States included within the following limits, namely: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence up the main channel of the same, and along the boundary of the state of Minnesota to Big Stone Lake; thence along the boundary line of the state of Minnesota to the Iowa line; thence along the boundary line of the state of Iowa to the point of intersection between the Big Sioux and Missouri rivers; thence up the Missouri river, and along the boundary line of the state of Nebraska, to the mouth of the Niobrara, or Running Water, river; thence following up the same, in the middle of the main channel thereof, to the mouth of the Keha Paha, or Turtle Hill, river; thence up that river to the forty-third parallel of north latitude; thence due west to the twenty-seventh meridian of longitude west from Washington; thence due north on that meridian to the forty-ninth degree of north latitude; thence east along the forty-ninth degree of north latitude to the place of beginning,—is organized into a temporary government by the name of the Territory of Dakota.

§ 1839. **Rights of Indians preserved.** Nothing in this title shall be construed to impair the rights of person or property pertaining to the Indians in any territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any territory now or hereafter organized until such tribe signifies its assent to the president to be embraced within a particular territory.

§ 1840. **Authority to regulate Indians.** Nor shall anything in this title be construed to affect the authority of the United States to make any regulations respecting the Indians of any territory, their lands, property or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such territory.

§ 1978. **Civil rights of citizens.** All citizens of the United States shall have the same right in every state and territory as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold, and convey real and personal property.

§ 1890. **Limitation on religious corporations to hold real estate.** No corporation or association for religious or charitable purposes shall acquire or hold real estate in any territory, during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

§ 1891. **Applicability of United States constitution and laws.** The constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States.

§ 1948. **Certain laws continued in force.** All general territorial laws of the territory of Dakota in force in any portion of the territory of Wyoming on the twenty-fifth July, eighteen hundred and sixty-eight, shall continue in force throughout the territory of Wyoming until repealed by the legislative authority of that territory, except such laws as relate to the possession or occupation of mines or mining claims.

§ 1977. **Equal rights under the law.** All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1892. **Penitentiaries.** Any penitentiary which has been, or may hereafter be, erected by the United States in an organized territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the territory or district in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming, and Colorado.

§ 1893. **Rules for their government.** The attorney general for the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed; and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the attorney general.

§ 1895. **Imprisonment in penitentiaries.** Any person convicted by a court of competent jurisdiction in a territory for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary, during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

REPRESENTATION IN CONGRESS.

§ 1862. **Delegate to congress.** Every territory shall have the right to send a delegate to the house of representatives of the United States, to serve during each congress, who shall be elected by the voters in the territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the house of representatives, with the right of debating, but not of voting.

§ 1863. **Time, places, and manner of electing delegates.** The first election of a delegate in any territory for which a temporary government is hereafter provided by congress shall be held at the time and places, and in the manner, the governor of such territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized territories, such time, places, and manner of holding the election shall be prescribed by the law of each territory.

SEAT OF GOVERNMENT.

§ 1885. **Location of.** The legislative assembly of every territory hereafter organized shall hold its first session at such time and place in the territory as the governor thereof shall appoint and direct; and at the first session of the legislative assembly, or as soon thereafter as it may be deemed expedient, the governor and legislative assembly shall proceed to locate and establish a seat of government for the territory at such place as they may think proper, but such place shall thereafter be subject to be changed by the governor and legislative assembly.

§ 1944. **How changed.** The seat of government of the territories of New Mexico, Utah, Washington, Colorado, Dakota, Arizona, and Wyoming may be changed by the governors and legislative assemblies thereof, respectively.

APPOINTMENT OF OFFICERS.

§ 1875. **District attorneys.** There shall be appointed in each territory a person learned in the law, to act as attorney for the United

States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

§ 1876. **Marshals.** There shall be appointed a marshal for each territory. He shall execute all process issuing from the territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law on the marshals for the several judicial districts of the United States. He shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

§ 2207. **Surveyor general, where appointed.** There shall be appointed by the president, by and with the advice and consent of the senate, a surveyor general for the states and territories herein named, embracing, respectively, one surveying district, namely: Louisiana, Florida, Minnesota, Kansas, California, Nevada, Oregon, Nebraska and Iowa, Dakota, Colorado, New Mexico, Idaho, Washington, Montana, Utah, Wyoming, Arizona.

SALARIES AND FEES.

§ 1845. **Salaries of governors and secretaries.** From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several territories shall be three thousand five hundred dollars, and the salaries of the secretaries shall be two thousand five hundred dollars each. (*See post*, § 1861.)

§ 1879. **Salaries of justices.** The annual salary of the chief justice and associate justices of all the territories now organized shall be three thousand dollars each.

§ 1880. **Salary of attorney.** The salary of the attorney of the United States for each territory shall be at the rate of two hundred and fifty dollars annually.

§ 1881. **Salary of marshal.** The salary of the marshal of the United States for each territory shall be at the rate of two hundred dollars a year.

§ 1882. **When salaries to be paid, etc.** The salaries provided for in this title, to be paid to the governor, secretary, chief justices and associate justices, district attorney, and marshal of the several territories, shall be paid quarter-yearly at the treasury of the United States.

§ 1935. **Contingent expenses.** There shall be appropriated annually one thousand dollars, to be expended by the respective governors to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming, including the salary of the clerk in the executive departments of those territories.

§ 1883. **Fees of clerks, etc.** The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the territories of the United States, shall be the same for similar services by such persons as prescribed in chapter 16, title "The Judiciary," and no other compensation shall be taxed or allowed.

§ 1884. **Salary not to be paid during absence.** When any officer of a territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the president, who shall officially certify his opinion of such cause to the proper accounting officer of the treasury, to be filed in his office.

§ 1894. **Payment of marshal on account of offenders.** The compensation as well as the expense incident to the subsistence and employment of offenders against the laws of the United States who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

§ 2208. **Surveyor general.** The surveyors general of Louisiana, Florida, Minnesota, Kansas, Nebraska, and Iowa, and of Dakota territory shall each receive a salary at the rate of two thousand dollars a year.

LEGISLATIVE POWER.

§ 1846. **Legislative powers.** The legislative power in each territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement of its regular sessions. The members of the council and house of representatives shall reside in the district or county for which they are respectively elected.

§ 1847. **Council and representative districts.** The several legislatures, at their next sessions, are directed to divide their respective territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed:" *provided*, the number of council districts shall not exceed twelve and the representative districts shall not exceed twenty-four in any one of said territories; and all parts of sections eighteen hundred and forty-seven, eighteen hundred and forty-nine, eighteen hundred and fifty-three, and nineteen hundred and twenty-two of the Revised Statutes of the United States in conflict with the provisions herein are repealed. (1 *Supp. Rev. St. p.* 380.)

§ 1849. **Apportionment.** The apportionment of representation which the governor is authorized to make by section 1847, in the case of a territory hereafter erected by congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, except Indians not taxed, and thereafter in such new territory, as well as in all territories now organized, the legislative assemblies respectively may readjust and apportion the representation to the two houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper, but the members of either house, as authorized by law, shall not be increased.

§ 1922*a*. **Number and pay of members of territorial legislature.** From and after the adjournment of the next session of the several territorial legislatures the council of each of the territories of the United States shall not exceed twelve members and the house of representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each, during the sessions provided by law, and shall receive such mileage as the law provides; and the president of the council and the speaker of the house of representatives shall each receive six dollars per day for the same time. And the several legislatures at their next sessions are directed to divide their respective territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable taking into consideration population, except "Indians not taxed:" *provided*, the number of council districts shall not exceed twelve, and the representative districts shall not exceed twenty-four, in any one of said territories; and all parts of sections eighteen hundred and forty-seven, eighteen hundred and forty-nine, eighteen hundred and fifty-three, and nineteen hundred and twenty-two of the Revised Statutes of the United States in conflict with the provisions herein are repealed. (1 *Supp. Rev. St. pp.* 379, 380, § 1, *par.* 10.)

§ 1855. **Prohibition of extra compensation.** No law of any territorial legislature shall be made or enforced by which the governor or secretary of a territory, or the members or officers of any territorial legislature, are paid any compensation other than that provided by the laws of the United States.

§ 1854. **Members prohibited from holding certain offices.** No member of the legislative assembly of any territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly in any territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any territory. The exception of postmasters shall not apply in the territory of Washington.

§ 1861. **Subordinate officers of territorial legislatures.** The subordinate officers of each branch of said territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day, one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and doorkeeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain at one dollar and fifty cents per day. Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any territory. And section eighteen hundred and sixty-one of the Revised Statutes is hereby repealed, and this substituted in lieu thereof: *provided*, that for the performance of all official duties imposed by the territorial legislatures, and not provided for in the organic act, the secretaries of the territories respectively shall be allowed such fees as may be fixed by the territorial legislatures. And in no case shall the expenditure for public printing in any of the territories exceed the sum of two thousand five hundred dollars for any one year. (1 *Supp. Rev. St. p.* 380, § 1, *par.* 10.)

§ 1852. **Limit of time in sessions.** The sessions of the legislative assemblies of the several territories of the United States shall be limited to forty days' duration.

§ 1851. **Extent of legislative powers.** The legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil, no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

§ 1925. **Restriction on legislative power.** In addition to the restrictions upon the legislative power of the territories contained in the preceding chapter, section eighteen hundred and fifty-one, the legislative assemblies of Colorado, Dakota, and Wyoming shall not pass any law impairing the rights of private property, nor make any discrimination in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value.

§ 1888. **Limitation on expenses of legislature.** No legislative assembly of a territory shall, in any instance or under any pretext, exceed the amount appropriated by congress for its annual expenses.

§ 1887. **Limitation on expenses of printing.** Hereafter no expense for printing, exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories.

§ 1889. **Legislature not to grant special charters.** The legislative assemblies of the several territories shall not grant private charters or especial privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable, or scientific association.

§ 1850. **Laws to be submitted to congress.** All laws passed by the legislative assembly and governor of any territory, except in any territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to Congress, and, if disapproved, shall be null and of no effect.

§ 1939. **Expenses of legislature.** There shall be appropriated, respectively, for the territories of New Mexico, Utah, Colorado, Dakota, Arizona, and Wyoming, annually, a sufficient sum, to be expended by the secretary of each territory herein named, upon an estimate to be made by the secretary of the treasury, to defray the expenses of the legislative assembly and other incidental expenses; and the secretary of each territory above specified shall, annually, account to the secretary of the treasury for the manner in which such sum has been expended.

§ 1886. **Accounts of territories.** All accounts for disbursements in the territories of the United States of money appropriated by congress for the support of government therein shall be settled and adjusted at the treasury department; and no act, resolution, or order of the legislature of any territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the treasury. No payment shall be made or allowed, unless the secretary of the treasury has estimated therefor and the object been approved by congress. No session of the legislature of a territory shall be held until the appropriation for its expenses has been made.

THE EXECUTIVE.

§ 1841. **Executive power.** The executive power of each territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. He shall reside in the territory for which he is appointed, and shall be commander in chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures for offenses against the laws of the territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the president can be made known thereon. He shall commission all officers who are appointed under the laws of such territory, and shall take care that the laws thereof be faithfully executed.

§ 1842. **Veto power.** Every bill which has passed the legislative assembly of any territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered upon the journal of each house. If any bill is not returned by the governor within three days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment *sine die*, prevent its return, in which case it shall not be a law.

§ 1843. **Secretary.** There shall be appointed a secretary for each territory, who shall reside within the territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. In case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall execute all the powers and perform all the duties of governor during such vacancy or absence, or until another governor is appointed and qualified.

§ 1844. **Secretary's duties.** The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the president, and two copies of the laws, within like time, to the president of the senate, and to the speaker of the house of representatives, for the use of congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the president. He shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the territory, within ten days after the passage of each act.

§ 1877. **Appointment of governor, etc.** The governor, secretary, chief justice and associate justices, attorney and marshal, of every territory, shall be nominated and, by and with the advice and consent of the senate, appointed by the president.

§ 1878. **Oath of office—qualification.** The governor and secretary for each territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers appointed for any territory, before they act as such, shall take a like oath before the governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as above directed; but after the first qualification of the officers herein specified in the case of a new territory, as well as in all organized territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each territory.

JUDICIARY.

§ 1907. **Judicial power, where vested.** The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming shall be vested in a supreme court, district courts, probate courts, and in justices of the peace.

§ 1868. **Chancery and common-law jurisdiction.** The supreme court and the district courts, respectively, of every territory, shall possess chancery as well as common-law jurisdiction.

§ 1912. **Writ of habeas corpus.** The supreme and district courts of each territory, and the respective judges thereof, except for Idaho and Montana, may grant writs of *habeas corpus* in all cases in which the same are grantable by the judges of the United States in the District of Columbia.

SUPREME COURT.

§ 1864. **Dakota supreme court to have four judges.** Hereafter the supreme court of the territory of Dakota shall consist of a chief justice and three associate justices, any three of whom shall constitute a quorum. (*March* 3, 1879; 20 *St. at Large*, 473.)

NOTE. Increased to six justices by act approved July 3, 1884, not yet published.

§ 1866. **Jurisdiction of courts.** The jurisdiction, both appellate and original, of the courts, provided for in section 1907, shall be limited by law.

§ 1869. **Appellate jurisdiction of supreme court.** Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court of all the territories, respectively, under such regulation as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in that court.

§ 1874. **Supreme court judges to hear certain causes.** The judges of the supreme court of each territory are authorized to hold court within their respective districts, in the counties wherein, by the laws of the territory, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

§ 1909. **Writs of error to United States supreme court.** Writs of error and appeals from the final decisions of the supreme court of either of the territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming shall be allowed to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the supreme courts created by this title, or of any judge thereof, or of the district courts created by this title, or of any judge thereof, upon writs of *habeas corpus* involving the question of personal freedom.

§ 1870. **Clerk of supreme court.** The supreme court of each territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

DISTRICT COURTS.

§ 1865. **Judicial districts and courts.** Every territory shall be divided into three judicial districts; and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.

NOTE. The judicial districts in Dakota increased to six by act approved July 3, 1884, not yet published.

§ 1873. **Judicial districts, how defined.** Temporarily, and until otherwise provided by law, the governor of every territory which may be hereafter established shall define, by proclamation, the judicial districts of such territory, and assign the judges appointed for such territory to the several districts, as well as fix the times and places for holding courts in the respective counties or subdivisions of each judicial district.

§ 1913. **Legislature may modify.** The legislative assemblies of New Mexico, Utah, Washington, Colorado, Dakota, Arizona, and Wyoming territories, respectively, may organize, alter, or modify the several judicial districts thereof, in such manner as each legislative assembly deems proper and convenient.

§ 1919. **Times and places of holding district courts.** The legislative assemblies of Colorado, Dakota, and Wyoming territories may fix or alter the times and places of holding the district courts for such territories, respectively, in such manner as each legislative assembly deems proper and convenient.

§ 1918. **Assignment of judges.** The legislative assemblies of New Mexico, Washington, Colorado, Dakota, Arizona, and Wyoming territories may assign the judges appointed for such territories, respectively, to the several judicial districts thereof, in such manner as each legislative assembly deems proper and convenient.

§ 1910. **Jurisdiction of district courts.** Each of the district courts in the territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such constitution and laws; but writs of error and appeals in all such cases may be had to the supreme court of each territory, as in other cases.

§ 1871. **Clerk of district court.** Each judge of the supreme court of the respective territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

§ 1872. **Register in chancery.** Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

JUSTICES OF PEACE.

§ 1867. **Jurisdiction.** No justices of the peace in any territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

§ 1926. **Same.** Justices of the peace in the territories of New Mexico, Utah, Washington, Dakota, Idaho, Montana, and Wyoming shall not have jurisdiction of any matter in controversy where the debt or sum claimed exceeds one hundred dollars.

ELECTION OF OFFICERS.

§ 1847. **Census and elections.** Previous to the first election for members of the legislative assembly of a territory in which congress may hereafter provide a temporary government, the governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintend such election and the returns thereof, as the governor may direct, and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties and districts is entitled under the act providing such temporary government for the particular territory. The persons having the highest number of legal votes in each of the districts for members of the council shall be declared by the governor to be duly elected to the council, and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of that house; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly, the governor shall order a new election, and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor appoints.

§ 1848. **Time and place of holding elections.** After such first election, however, the time, place, and manner of holding elections by the people in any newly-created territory, as well as of holding all such elections in territories now organized, shall be prescribed by the laws of each territory.

§ 1856. **Election of justices of peace and militia officers.** Justices of the peace and all general officers of the militia in the several territories shall be elected by the people in such manner as the respective legislatures may provide by law.

§ 1857. **Other officers.** All township, district, and county officers, except justices of the peace, and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each territory; and all other officers not herein otherwise provided for the governor shall nominate, and, by and with the advice and consent of the legislative council of each territory, shall appoint; but, in the first instance, where a new territory is hereafter created by congress, the governor alone may appoint all the officers referred to in this and the preceding section, and assign them to their respective townships, districts, and counties, and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

§ 1858. **Vacancies, how filled.** In any of the territories, whenever a vacancy happens from resignation or death, during the recess of the legislative council, in any office which, under the organic act of any territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

§ 1859. **Qualifications of voting and holding office.** Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens, in any territory hereafter organized, and who are actual residents of such territory at the time of the organization thereof, shall be entitled to vote at the first election in such territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

§ 1860. **At future elections.** At all subsequent elections, however, in any territory hereafter organized by congress, as well as at all elections in territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the constitution and government of the United States.

Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any territory, by reason of being on service therein, unless such territory is, and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any territory.

LAND LAWS APPLICABLE TO DAKOTA.

§ 1946. **School lands.** Sections numbered 16 and 36 in each township of the territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming shall be reserved for the purpose of being applied to schools in the several territories herein named, and in the states and territories hereafter to be erected out of the same.

NOTE Special act to amend an act donating public lands to states and territories providing colleges for the benefit of agriculture and the mechanic arts. (*March* 3. 1883, *c.* 102; 22 *St.* 484.)

§ **Land grant for university.** *Be it enacted, etc.*, that there be and are hereby granted to the territories of Dakota, Montana, Arizona, Idaho, and Wyoming, respectively, seventy-two entire sections of the unappropriated public lands within each of said territories, to be immediately selected and withdrawn from sale and located under the direction of the secretary of the interior, and with the approval of the president of the United States, for the use and support of a university in each of said territories when they shall be admitted as states into the Union: *provided*, that none of said lands shall be sold except at public auction, and after appraisement by a board of commissioners to be appointed by the secretary of the interior: *provided, further*, that none of said lands shall be sold at less than the appraised value, and in no case at less than two dollars and fifty cents per acre: *provided*, that the funds derived from the sale of said lands shall be invested in the bonds of the United States, and deposited with the treasurer of the United States; that no more than one-tenth of said lands shall be offered for sale in any one year; that the money derived from the sale of said lands, invested and deposited as hereinbefore set forth, shall constitute a university fund; that no part of said fund shall be expended for university buildings, or the salary of professors or teachers, until the same shall amount to fifty thousand dollars, and then only shall the interest on said fund be used for either of the foregoing purposes until the said fund shall amount to one hundred thousand dollars, when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities. (1 *Supp. Rev. St. p.* 593.)

§ **Land granted for insane asylum.** *Be it enacted, etc.*, that section thirty-six, in township number fifty-six north, of range number ninety-four west, in the county of Yankton, territory of Dakota, be and the same is hereby granted to said territory for the purposes of an asylum for the insane; and that there be and is hereby granted to said territory one section of land, in lieu of said thirty-sixth section, for school purposes, said section to be selected by the governor of said territory from any of the public lands subject to private sale or entry. Such selection, when so made, shall be certified by the said governor to the surveyor general of said territory, and to the officers of the local land-office of the district in which such land may be situated; and from the filing of such certificate said land shall be withdrawn from private sale or entry, and shall be held as a portion of the lands granted to said territory for school purposes. (1 *Supp. Rev. St. p.* 569.)

§ **Timber may be cut from mineral lands.** All citizens of the United States and other persons, *bona fide* residents of the state of Colorado or Nevada, or either of the territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be and are hereby authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said states, territories, or districts of which such citizens or persons may be at the time *bona fide* residents, subject to such rules and regulations as the secretary of the interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *provided*, the provisions of this act shall not extend to railroad corporations. (1 *Supp. Rev. St. p.* 327, § 1.)

§ **Duty of registers and receivers.** It shall be the duty of the register and the receiver of any local land-office in whose district any mineral land may be situated, to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land-districts; and, if so, they shall immediately notify the commissioner of the general land-office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid and allowed such register and receiver in making up their next quarterly accounts. (*Id.* § 2.)

§ **Penalty for violation of act.** Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the secretary of the interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months. (*Id.* § 3.)

§ **Citizens may reclaim and purchase any desert lands.** It shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such," and upon payment of twenty-five cents per acre, to file a declaration under oath with the register and the receiver of the land-district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same, within the period of three years thereafter: *provided, however*, that the right to the use of water by the person so conducting the same on or to any tract of desert land of six hundred and forty acres shall depend upon *bona fide* prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes, subject to existing rights. Said declaration shall describe particularly said section of land, if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him: *provided*, that no person shall be permitted to enter more than one tract of land, and not to exceed six hundred and forty acres, which shall be in compact form. (1 *Supp. Rev. St. pp.* 289, 290, § 1.)

§ **Desert lands defined.** All lands, exclusive of timber lands and mineral lands, which will not without irrigation produce some agricultural crop shall be deemed desert lands within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land-office in which said tract of land may be situated. (*Id.* § 2.)

§ **Application of act.** This act shall only apply to and take effect in the states of California, Oregon, and Nevada, and the territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the commissioner of the general land-office. (*Id.* § 3.)

§ **Forts abolished.** *Be it enacted, etc.*, that the military reservations of Fort Abercrombie, Fort Seward, and Fort Ransom, all in the territory of Dakota, be and the same are hereby abolished, and the secretary of the interior is hereby authorized to have the lands embraced therein surveyed and made subject to homestead and pre-emption entry and sale, the same as other public lands: *provided*, the rights of all actual settlers, entitled to the benefits of the homestead and pre-emption laws of the United States, who now occupy in good faith any portion of the land embraced within any of said reservations, shall date from the day of their actual settlement thereon; and in perfecting their titles thereto under the homestead or pre-emption laws, the time such settlers have occupied and improved their said lands shall be allowed: *provided, further*, that when the lands embraced in said reservations shall be surveyed the claims of all such actual settlers shall be made to conform to the lines of the government survey. (1 *Supp. Rev. St. p.* 544.)

§ **Pre-emptors of public lands—rights of.** *Be it enacted, etc.*, that the time at which pre-emptors on the public lands in the state of Minnesota, including the lands within the Fort Ridgeley and Sioux Indian reservations, and the old Sioux Indian reservation in the county of Grant, territory of Dakota, are now required to make final proof and payment, be and the same is hereby extended two years from October first, eighteen hundred and seventy-eight, in all cases when the pre-emptor shall make due proof before the register and receiver of the local land-office in the district in which their lands are situated that their crops have been destroyed or seriously injured by grasshoppers within two years prior to October first, eighteen hundred and seventy-eight. (1 *Supp. Rev. St. p.* 491.)

§ **Fort Randall military reservation.** *Be it enacted, etc.*, that the secretary of war be and he is hereby authorized to transfer to the custody of the department of the interior such portions of the military reservation of Fort Randall, in Dakota, as were actually occupied by settlers prior to the promulgation of the order of the president of June fourteenth, eighteen hundred and sixty, setting apart the reservation for military purposes; and, further, such portions of the said reservation as were released from military occupation and control between the years eighteen hundred and sixty-seven and eighteen hundred and seventy, and were during that time settled upon in good faith and in the belief that the lands were open to settlement. (1 *Supp. Rev. St. p.* 24, § 1.)

§ **Certain settlers to have patents.** That the secretary of the interior be authorized to confirm, in accordance with existing laws, the titles of such settlers upon the military reservation of Fort Randall as may be reported by the secretary of war for that purpose, and to cause patents to be issued for such lands as the aforesaid settlers may be entitled to under existing laws and the provisions of this act. (*Id.* § 2.)

§ **To be paid for improvements.** That the secretary of the treasury be and he is hereby authorized to pay to each of the aforesaid settlers the respective amounts that were appraised as the value of their respective improvements, by a military board of survey convened for that purpose at Fort Randall, under instructions from the war department, dated March third, eighteen hundred and seventy-one: *provided*, that in case any improvements, or portion thereof, shall have been restored or delivered to any settler, after the appraisement of the same by the said military board of survey, such settler shall not be entitled to payment under this act for the improvements, or portion thereof, so restored or delivered to him. (*Id.* § 3.)

BOUNDARIES OF LAND-DISTRICTS.

§ 2256. **Land-districts in Dakota.** The following boundaries of land-districts, with the location of the respective land-offices, are established until changed in pursuance of law, namely:

VERMILLION.

The Yankton land-district is bounded as follows: Beginning at a point on the north bank of Missouri river, on the line between ranges fifty-two and fifty-three west of the fifth principal meridian; thence north along said range-line to the line between townships one hundred and twenty and one hundred and twenty-one north, ranges fifty-two and fifty-three west; thence east with said range-line to the western boundary of the state of Minnesota; thence south with said boundary to the north boundary of Iowa; thence west with said boundary of the state of Iowa to the Big Sioux river; thence down said river to its mouth; thence up the middle channel of the Missouri river to the point opposite the place of beginning; and thence north to the point of beginning.

SPRINGFIELD

Land-district is bounded as follows: Beginning at a point of the intersection of the line between ranges fifty-seven and fifty-eight west of the fifth principal meridian with the Missouri river; thence north with said range-line to the intersection of the line between townships one hundred and twenty and one hundred and twenty-one north; thence west on said township-line to the west boundary of Dakota territory; thence south with said boundary to the south boundary of the territory of Dakota; thence east with the south boundary of Dakota to the place of beginning.

PEMBINA

Land-district is bounded on the east by the western boundary of the state of Minnesota; on the south by the line between townships one hundred and twenty and one hundred and twenty-one north of the base-line, extending west from the west boundary of the state of Minnesota to the intersection of the line between ranges fifty-two and fifty-three west of the fifth principal meridian; thence north with said range-line to the forty-sixth parellel of north latitude; thence west along said parallel to the line between ranges fifty-seven and fifty-eight west; thence south along said range-line to the intersection of the line between townships one hundred and twenty and one hundred and twenty-one north; thence west along said township-line to the west boundary of Dakota territory; thence north with said boundary to the forty-ninth parallel of north latitude; and thence east with said parallel to the western boundary of the state of Minnesota.

YANKTON

Land-district is bounded as follows: Beginning at a point on the north bank of Missouri river at the intersection of the line between ranges fifty-two and fifty-three; thence north along said range-line to the forty-sixth parallel of north latitude; thence west along said parallel to the line between ranges fifty-seven and fifty-eight; thence south along said range-line to the Missouri river; thence easterly along the north bank of said stream to the place of beginning.

BISMARCK.

All that portion of Dakota territory lying north of the seventh standard parallel and west of the north guide-meridian be and the same is hereby, created into a separate land-district, to be known as the Bismarck district; and the land-office for said district shall be located at the town of Bismarck, where the North Pacific Railroad intersects the Missouri river. (*April* 24, 1874, *c.* 127, § 1; 18 *St.* 34.)

A register and receiver shall be appointed for said district land-office, who shall be governed by the same laws and receive the same compensation as prescribed for similar officers in the other land-districts in said territory. (*Id.* § 2.)

GRAND FORKS.

All that portion of the territory of Dakota lying and being north of the twelfth standard parallel and east of the tenth guide-meridian shall constitute a new land-district, to be known as the Grand Forks district. (*January* 21, 1880, *c.* 8, § 1; 21 *St.* 60.)

The president is hereby authorized to appoint, in the manner prescribed by law, a register and a receiver for said district, who shall be required to reside in Grand Forks, in the county of Grand Forks, until such time as the president may, in his discretion, remove the site of said land-office from said Grand Forks; and said register and said receiver shall be subject to the same laws and entitled to the same compensation as is or may be provided by law in relation to existing land-offices and officers in said territory. (*Id.* § 2.)

WATERTOWN.

All that part of the territory of Dakota bounded as follows, to-wit: Commencing at the south-east corner of township one hundred and nine north, range fifty-nine west of the principal meridian; thence west along the second standard parallel north to the Mississippi river; thence up and along the east bank of said river to a point where the fifth standard parallel north intersects said river; thence east along said standard parallel north to the north-west corner of township one hundred and twenty north, range fifty-nine west; thence south to the south-west corner of township one hundred and thirteen north, range fifty-nine west; thence east to the south-east corner of said township; thence south to the place of beginning, —be and the same is hereby constituted a new land-district the office of which shall be located at such place as shall be designated by the president of the United States. (*Act March* 23, 1882, *c.* 49, § 1; 22 *St.* 33.)

OTHER NEW LAND-DISTRICTS.

All that part of the territory of Dakota bounded as follows, to-wit: Commencing at the north-west corner of township one hundred and twenty north, range fifty-nine west of the fifth principal meridian; thence west along the fifth standard parallel north to the Missouri river; thence up and along the east bank of said river to the south line of township one hundred and thirty north; thence east along said line to the north-east corner of township one hundred and twenty-nine north, range fifty-nine west; thence south to the south-east corner of township one hundred and twenty-nine north, range fifty-nine west; thence east along the seventh standard parallel north to the north-west corner of township one hundred and twenty-eight north, range fifty-nine west; thence south to the place of beginning,—be and the same is hereby constituted a new land-district, the office of which shall be located at such place as shall be designated by the president of the United States. (*Id.* § 2.)

All that part of the territory of Dakota bounded as follows, to-wit: Commencing at a point where the second standard parallel north of the fifth principal meridian intersects the eastern boundary of said territory; thence west along said parallel to the south-east corner of township one hundred and nine north, range fifty nine west; thence north to the north-east corner of township one hundred and twelve north, range fifty nine west; thence west along the third standard parallel north to the eighth guide-meridian; thence north along said guide-meridian to the north-west corner of township one hundred and twenty-eight north, range fifty nine west; thence west along the seventh standard parallel north to the south-east corner of township one hundred and twenty-nine north, range fifty-nine west; thence north to the south-east corner of township one hundred and thirty north, range fifty-nine west; thence east to the eastern boundary line of the territory of Dakota; thence southerly on said boundary line to the place of beginning,—shall constitute the limits of the Watertown land-district. (*Id.* § 3.)

All that part of the territory of Dakota bounded as follows, to-wit: Commencing at the most easterly point where the Missouri river crosses the second standard parallel; thence up and along said river to the most westerly point where said river crosses said parallel; thence west on said parallel to the south fork of the Cheyenne river; thence south-west along said south fork of said Cheyenne river to the twenty-sixth degree of longitude west from Washington; thence south to the south boundary of the territory of Dakota; thence east along said south boundary of said territory to the Missouri river; thence north-westerly along said river to the place of beginning,—be and the same is hereby constituted a new land-district, and the office shall be located at such place in said district as shall be designated by the president of the United States. (*Act March* 3, 1883, *c.* 140, § 1; 22 *St.* 582.)

That all that part of the territory of Dakota bounded as follows, to-wit: Commencing at the most westerly point where the Missouri river intersects the second standard parallel; thence northerly along said river to the fifth standard parallel; thence west to the twenty-sixth degree of longitude west from Washington; thence south to the north fork of the Cheyenne river; thence east and south along said river to its mouth; thence up and along the south fork of the Cheyenne river to a point where the second standard parallel produced would intersect said river; thence east to the Missouri river at the place of beginning,—be and the same is hereby constituted a new land-district, and the office shall be located at such place in said district as shall be designated by the president of the United States. (*Id.* § 2.)

All that part of the territory of Dakota bounded as follows, to-wit: Commencing at a point on the twelfth standard parallel between ranges sixty-three and sixty-four; thence north to the north boundary of the territory of Dakota; thence west along said boundary to the eleventh guide-meridian; thence south along said meridian to the twelfth standard parallel; thence east to the place of beginning,—be and the same is hereby constituted a new land-district, and the office in said district shall be located at such place as shall be designated by the president of the United States. (*Id.* § 3.)

The president, by and with the advice and consent of the senate, is hereby authorized to appoint a register and a receiver for each of said land-districts, who shall discharge like and similar duties, and receive the amount of compensation allowed by law to other officers discharging like duties in the land-offices of said territory: *provided*, that such officers shall not be appointed nor land-offices opened in the districts created by the first and second sections of this act until a cession shall have been made by treaty duly ratified by congress of a portion of the Great Sioux Indian Reservation within the limits of the said districts. (*Id.* § 4.)

CHAPTER III.

PROVISION FOR DIVISION OF TERRITORY.

Be it Resolved by the Council and House of Representatives of the Territory of Dakota:

That there shall be appointed a joint committee, consisting of five from the council and seven from the house, being one from each legislative district, whose duty it shall be to carefully and thoroughly consider the relation of this territory to the general government, and to report from time to time to their respective houses what action they deem it advisable that this legislature should take to secure division of the territory and the admission of the southern half; and the further action it should take to convince the people of the territory and the congress of the United States that the people of Dakota are unalterably opposed to its admission as a whole. (*J. R. Sp. Laws* 1885, *c.* 46.)

CHAPTER IV.

PROVISIONS AS TO ADMISSION OF PART AS A STATE.

MEMORIAL TO CONGRESS.

A Joint Resolution and Memorial to the Congress of the United States, praying for the Division of Dakota, and for the Admission of the Southern Portion of said Territory as a State.

To the Honorable the Congress of the United States:

The legislative assembly of the territory of Dakota respectfully represents that the people of this territory earnestly desire the passage of the bill, now pending in the house of representatives, providing for the admission of the southern portion of Dakota as a state, and for the creation of a separate territory from the northern portion thereof, dividing the same on the seventh standard parallel, according to government survey, or the forty-sixth parallel of north latitude, in the discretion of congress. The desire for division is so universal, and the reasons for it so apparent, that the people of this territory have believed and still believe that this measure of justice cannot be refused them.

The probable division of the territory has been considered in the territorial conventions of both political parties at every meeting for the last thirteen years, and these conventions, in almost every instance, without a dissenting voice, have invariably declared in favor of division.

The legislative assembly of the territory has repeatedly memorialized your honorable body for division.

Public institutions have been located and built with a view to division. Conventions have been held in each section to promote division, and delegations have been appointed to go to the capital of the United States to labor for division. The people of the territory have employed every possible form of respectful petition for division.

The population and area of the territory justify division, and refusing it leaves both sections in an unsettled condition, and operates to the serious disadvantage of both. The area of the territory is greater than the united areas of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland. The population of the territory, as shown by its vote, by the public lands occupied, by its postal and internal revenues, and by its banking and other business interests, is not less than four hundred and fifty thousand, and there is good reason for believing it amounts to five hundred thousand.

The population of the southern portion, for which admission is asked, cannot now fall much short of three hundred thousand, and will very soon exceed that figure. The climate, surface, and soil of the territory are as well adapted to agricultural pursuits and the ordinary industries of the north, as are the climate, surface, and soil of Illinois and Iowa.

The people of the territory have as great a regard for the rights of others, and smart as keenly under a sense of injustice, as those of any other territory or state.

The revenues paid into the United States treasury by the people of Dakota, and all statistics attainable, prove that the population and material interests of the territory are sufficiently great to justify this consideration at your hands.

No difficulty can arise as to the apportionment of the public debt of the territory, as it was wholly created for the erection of public buildings, and the bonds clearly show for what purpose issued. Those issued for public buildings in that part of the territory south of the forty-sixth parallel should be paid by the southern division of the territory, and those issued for public buildings erected in the north should be paid by the northern division of the territory.

The union of the two sections in one state would be unnatural, and would lead to endless difficulties.

The division prayed for is wise. It will quiet unrest, prevent difficulties and misunderstandings which will arise if it is not granted, and will promote the interests of both sections. And, although the people of all Dakota are earnestly in favor of admission of the southern half as a state, still they will hail with joy division only; and if asking for admission of the southern half as a state will in any manner delay division, then we earnestly request division, without the admission prayed for, at the earliest possible time.

And for your favorable consideration hereof your memorialists will ever pray.

Resolved, that a copy of the above and foregoing memorial, signed by the president of the council and speaker of the house, and attested by their chief clerks, be sent to the president of the United States senate, the speaker of the house of representatives of the United States, and to our delegate in congress.

THE HONORABLE JOHN B. RAYMOND.

(*Sp. Laws* 1885, *c.* 47.)

CHAPTER V.

CONSTITUTIONAL CONVENTION.

An Act Providing for a Constitutional Convention, and the Formation of a State Constitution, Preparatory to the Admission of Dakota into the Union, and for Other Purposes.

PREAMBLE.

WHEREAS, Experience has abundantly demonstrated that the welfare of the people is promoted by the establishment among them of a permanent government, sovereign in character and republican in form; and

WHEREAS, The territorial system of government has no stability, is temporary in character, possesses no sovereign powers, and meets neither the requirements of the people nor, in the case of Dakota, the rapidly increasing demands of its various and growing interests; and

WHEREAS, It has ever been and still remains the wise policy of the parent government to foster and encourage the development and settlement of the territories, until such time as their population shall be sufficiently numerous to entitle the people to be admitted into and become a part of the United States, on an equal footing with the states which compose the Union; and

WHEREAS, That part of the territory of Dakota south of the forty-sixth parallel of latitude now contains a population sufficient to entitle it to admission into the Union, and such population now being desirous of being fully enfranchised, and of enjoying all the privileges of American citizenship; and,

WHEREAS, Public opinion in the United States has decided, and the congress of the United States, by their action upon the bill for the admission of such part of Dakota into the Union, has admitted, that that portion of Dakota south of the forty-sixth parallel does possess the requisite population and all other qualifications necessary to entitle it to admission into the Union as a state; therefore,

Be it enacted by the Legislative Assembly of the Territory of Dakota:

§ 1. **Convention provided for.** That for the purpose of enabling the people of that part of Dakota south of the forty-sixth parallel to organize and form a state government and make application for admission into the Union of States, a delegate convention is hereby called to meet at the city of Sioux Falls, in the county of Minnehaha, in said territory of Dakota, on Tuesday, the eighth day of September, A. D. eighteen hundred and eighty-five, at twelve o'clock, meridian, for the purpose of framing a constitution, republican in form, and performing all other things essential to the preparation of the territory for making application to the general government for the admission of such part of Dakota into the Union of States. (*Sess. Laws* 1885, *c.* 33, § 1.)

§ 2. **Delegates to convention — apportionment.** The said convention shall be composed of one hundred and eleven delegates, who shall be apportioned among the several counties of that part of the territory south of the forty-sixth parallel as follows:

Aurora, 2; Bon Homme, 3; Buffalo, 1; Brule, 3; Beadle, 5; Brookings, 3; Brown, 4; Butte, 1; Campbell, 1; Charles Mix, 1; Clay, 2; Custer, 1; Clark, 2; Codington, 2; Hyde, 1; Hamlin, 1; Hanson, 2; Hutchinson, 3; Jerauld, 2; Kingsbury, 2; Lake, 2; Lincoln, 2; Lawrence, 8; McPherson, 1; McCook, 2; Miner, 2; Minnehaha, 6; Moody, 2; Day, 2; Douglass, 2; Davison, 2; Deuel, 1; Edmunds, 1; Fall River, 1; Faulk, 1; Grant, 2; Hand, 3; Hughes, 3; Pennington, 2; Potter, 1; Roberts, 1; Spink, 6; Sanborn, 2; Sully, 2; Turner, 4; Union, 3; Walworth, 1; Yankton, 4.

Provided, that all organized counties in the territory south of the forty-sixth parallel at the time the election hereinafter provided for is held, to choose members to said convention, and which counties are not above named, shall be entitled to one delegate, who shall be given a seat, and have a vote in said convention as other members thereof, and said delegate shall be in addition to the one hundred and eleven heretofore provided for. (*Id.* § 2.)

§ 3. **Election of delegates.** An election for the purpose of choosing said delegates is hereby appointed to be held on the thirtieth day of June, (Tuesday,) 1885, at which time the delegates to said constitutional convention shall be chosen. Said election shall be conducted in all respects as elections under the general laws of this territory, and the several county clerks of the several counties of the territory are hereby required to issue notice of such election at least twenty days prior thereto, stating the object of such election, and the number and character of the officers to be chosen, and shall deliver the same to the sheriff, who is required to post the same as the law now requires; and the several boards of county commissioners are required to establish precincts for such election, and to appoint polling places and judges of such election, and to do and perform all things that are now required of them by law in case of general elections; and the canvass and return of the votes shall be as now required by law in the case of county officers; and it is hereby made the duty of the several county clerks to issue certificates of election to all persons who shall be declared elected: *provided*, that the persons receiving the highest number of votes at such election shall be elected as such delegates. It shall be the further duty of such county clerks, within ten days after such election, to certify to the secretary of the territory the names of all persons chosen as such delegates from their respective counties, and to transmit the same to said secretary by mail. (*Id.* § 3.)

§ 4. **Certificates of election.** The secretary of the territory shall receive all certificates so transmitted to him by the several county clerks, and shall preserve the same; and it is hereby made his duty to enter the names of all persons so certified to him as such delegates in a book which he shall provide for that purpose. (*Id.* § 4.)

§ 5. **Meeting of delegates.** The delegates so elected at such election shall meet at the time and place appointed by this act, and in such room as the secretary of the territory or the convention have provided, and at the hour heretofore named the secretary of the territory, or some member-elect of said convention, shall call the convention to order, and shall call the roll of the members from the book heretofore provided, if such book can be obtained, and if not, from the official returns of said election, and the certificate of election of each member in such manner as the convention shall prescribe, and the several delegates, as their names are called, shall take their seats in said convention. When the calling of the roll of members shall be completed, the several delegates shall be required to take and subscribe an oath to support the constitution of the United States, and to faithfully and impartially discharge their duties as delegates to said convention. Said oath may be administered by said secretary, or by any judicial officer of the territory. The convention shall then proceed to organize by the election of a president (who shall be chosen from among the delegates) and the other officers herein provided for. Said convention shall adopt such rules and regulations for their government as are provided in the case of legislative bodies; it may adjourn from time to time, and shall be the sole judge of the election and qualifications of its members. The president and all officers of said convention shall take and subscribe an oath to faithfully and impartially discharge the duties of their respective offices. (*Id.* § 5.)

§ 6. **Constitution to be drafted.** Said convention, after its organization, shall proceed to draft a constitution for that portion of Dakota south of the forty-sixth parallel, republican in form, in which shall be defined the boundaries of the proposed state south of the forty-sixth parallel. It shall be the further duty of said convention to provide for an election by the people of the proposed state, at which election the said constitution shall be submitted to the people for ratification; and at which election the state officers, member of congress, members of the legislature, and all other officers provided for in said constitution, shall be elected, and the said convention shall have power to provide all necessary means for holding said election, and for reassembling said legislature when elected, and for carrying into effect all the purposes of said constitution: *provided*, that the expenses of all special elections under the provisions of this act, and of any ordinance of said convention, shall be paid by each county in said territory respectively. (*Id.* § 6.)

§ 7. **Compensation of delegates.** The delegates to the said constitutional convention shall each receive a per diem of two dollars and fifty cents for each day's attendance upon said convention, and five cents per mile for each mile necessarily traveled in going to and returning from said convention; said per diem and mileage to be paid by the territorial treasurer, upon the warrant of the territorial auditor. (*Id.* § 7.)

§ 8. **Duty of auditor.** The territorial auditor is hereby authorized to audit and allow the accounts of the several delegates to said convention, upon certificates of the presiding officer of said convention, countersigned by the secretary thereof. (*Id.* § 8.)

§ 9. **Officers of convention—compensation.** Said convention shall have power to elect a secretary, assistant secretary, employ stenographers, a chaplain, sergeant-at-arms, messengers and clerks, and janitor, each of whom shall receive such compensation as the said convention shall determine, to be audited and paid in the same manner as the accounts of the members of said convention are audited and paid: *provided*, that said convention, before its adjournment, shall ascertain the entire expense of holding the same, including the per diem and mileage of its members, compensation of its officers, and all necessary expenses, and shall certify the same under the hand of the presiding officer of said convention, and attested by the secretary thereof, to the secretary of the territory, which shall be filed by the said secretary of the territory in his office and be kept as a record thereof; and it is hereby made the duty of the several boards of county commissioners of the counties named herein, or represented in said convention, to cause to be levied and collected, in the same manner as other taxes are levied and collected, a special tax sufficient to pay all of said expenses, which tax shall be apportioned among the said counties in proportion to their assessed valuation, and when said tax is collected in each of said counties, the same shall be paid by said counties into the territorial treasury: *provided*, that in case of the division of the territory of Dakota, or the admission of the southern half as a state, before the collection and payment of said tax into the territorial treasury as herein provided, then the treasurer of said state or territory formed from that portion of Dakota south of the forty-sixth parallel, as the case may be, shall pay over to the territory of North Dakota such proportion of said moneys as the assessed valuation of the property in North Dakota bears to the assessed valuation of property in South Dakota, in said new state or territory. (*Id.* § 9.)

§ 10. **What laws to govern.** The laws now in force governing elections, and the canvass and return of the votes cast therein, and the qualifications of voters, shall govern in any election that may be held under this act, or under any ordinance of said convention; but said convention shall designate the board of state canvassers, and ordain the method by which the result of the state election shall be promulgated. The said convention shall also provide the manner of presenting the said constitution to the congress of the United States, and do and ordain all things necessary to be done for the purpose of carrying into effect the government of the state as soon as it shall be admitted into the Union of States. (*Id.* § 10.)

§ 11. **Term of session—adjournments.** That the members of said convention shall not receive pay for a session of more than thirty days, but said convention may sit for a longer period, and may adjourn from time to time. (*Id.* § 11.)

§ 12. **Appropriation for expenses.** That, for the purpose of defraying the expenses of said convention, there is hereby appropriated out of any money in the territorial treasury, not otherwise appropriated, a sum sufficient to defray the expenses of said convention, not to exceed in the aggregate the sum of twenty thousand dollars. (*Id.* § 12.)

CHAPTER VI.

IMMIGRATION.

An Act Creating the Office of Commissioner of Immigration, and for the Appointment of a Commissioner of Immigration for the Territory of Dakota.

§ 1. **Commissioner of immigration.** The office of commissioner of immigration is hereby created and established. (*Sess. Laws* 1885, *c.* 66, § 1.)

§ 2. **Duties of office of commissioner.** The duties of the said office shall be performed by a commissioner of immigration, who shall be appointed by the governor, by and with the advice and consent of the council, for the term of two years from the date of his appointment, and shall serve during the said term of two years, and until his successor is appointed and shall have qualified. The commissioner must be a resident of Dakota, and shall possess the requisite qualifications required by law for holding office in the territory. (*Id.* § 2.)

§ 3. **Qualification.** The person so appointed shall upon his confirmation proceed to qualify by subscribing the proper oath of office, and depositing with the secretary of the territory his official bond in the sum of five thousand dollars, with such surety as the secretary shall approve, conditioned for a faithful discharge of the duties of his office. (*Id.* § 3.)

§ 4. **Duty to promote immigration.** It shall be the duty of the commissioner to look after and devise means to advance the immigration interests of Dakota, and to encourage and promote the permanent settlement and improvement of all sections of the territory. He shall have charge of the preparation in manuscript, the publication, and the distribution, by mail and otherwise, of any and all documents and articles of reading matter designed to convey correct and full information on all matters pertaining to the growth and development of the agricultural, manufacturing, commercial, and mining interests of the territory of Dakota. He shall attend to all correspondence relating to immigration, and shall do all in his power by letter, by the use of published printed matter, and through personal efforts, to secure the most liberal and extensive advertisement of the resources and opportunities of Dakota. It shall be his aim to induce the investment of capital in agriculture, in mining, and in different industrial and mercantile pursuits, and to facilitate the coming to Dakota of persons and families seeking permanent location for new homes. It shall be the duty of the commissioner to procure the most favorable rates of fare obtainable from railroad and other transportation companies for persons coming to Dakota; and where such persons have formed a colony or party of considerable numbers, he shall be required to visit them if necessary, and do all in his power to direct and assist them in making the necessary arrangements for transportation, and in reaching Dakota. (*Id.* § 4.)

§ 5. **Products and resources of the territory.** The commissioner shall have charge of any exhibit of the products and resources of Dakota which may be made at any fair or exposition held at any point in the United States, and shall have authority to co-operate with any railroad company or companies doing business in the territory, and with any other parties interested, with the view of securing such exhibit at any fair or exposition held as aforesaid. (*Id.* § 5.)

§ 6. **Territorial statistician.** The commissioner shall and is hereby declared to be *ex officio* territorial statistician. It shall be his duty to obtain from county assessors and other officers of the organized counties of the territory, and to collect and prepare in tabulated form for reference, statistics showing county, township, and other municipal indebtedness of all kinds; the assessed valuation of real and personal property; the acreage in wheat, corn, and other kinds of grain; the number of cattle, horses, hogs, and other live-stock; and the population, vital statistics, and all other information pertaining to and showing the condition, growth, and development of the territory by counties. (*Id.* § 6.)

§ 7. **Reports of commissioner.** The commissioner shall make a report on the first day of each month, or at any time, upon the request of the governor, showing the work done by his office, and shall make a biennial report to the governor, at the regular session of the legislative assembly, showing the operations and affairs of his office in detail. (*Id.* § 7.)

§ 8. **Removal from office.** The commissioner may, at any time during his term of office, be removed from office by the governor, on presentation of satisfactory evidence of his incompetency, or failure to perform the duties of his office properly, and the governor shall have power to fill the vacancy during the interim for the balance of the unexpired term. (*Id.* § 8.)

§ 9. **Salary.** The commissioner shall have an annual salary of two thousand dollars. (*Id.* § 9.)

§ 10. **Appropriation—office expense.** The sum of nine hundred dollars per annum shall be allowed the commissioner for clerk hire and other office expenses. For traveling expenses incurred while in the performance of the duties of his office, embraced within the provisions of this act, the commissioner shall be allowed the sum of five hundred dollars for each year of his term of office. (*Id.* § 10.)

§ 11. **Appropriation — advertising.** To defray the expenses of the office of the commissioner incurred in the publication and distribution of advertising and reading matter, and documents of all kinds, and in any and every other manner contracted under the authority of this act for the purpose of carrying out its provisions, there shall be and is hereby appropriated out of any funds belonging to the territory, not otherwise appropriated, the sum of four thousand dollars, or so much thereof as may be necessary for the two years ending on the thirty-first day of December, 1886. (*Id.* § 11.)

CHAPTER VII.

CENSUS.

An Act to Provide for Taking the Census of the Territory of Dakota.

§ 1. **Superintendent of census.** The governor of this territory is hereby designated as the superintendent of census, and is hereby empowered to employ one clerk, who shall receive such compensation for his services as the governor shall deem adequate. (*Sess. Laws* 1885, *c.* 30, § 1.)

§ 2. **Blanks to be prepared.** The superintendent of census shall cause to be prepared such blanks as are necessary for taking the census of the territory of Dakota for the year 1885. (*Id.* § 2.)

§ 3. **Supervisors of census.** The governor shall nominate and, by and with the advice and consent of the legislative council, shall appoint two supervisors of the census, one of whom shall be supervisor of the census for North Dakota, and the other supervisor of the census for South Dakota. The supervisors of census shall, upon entering upon the duties of their office, respectively, take and subscribe the following oath or affirmation: "I, ———, supervisor of census, do solemnly swear (or affirm) that I will support the constitution of the United States, and the organic act of this territory, and perform and discharge the duties of supervisor of census according to law, honestly and correctly, to the best of my ability;"—which oath shall be filed in the office of the governor. (*Id.* § 3.)

§ 4. **Subdivision of census districts.** Each supervisor of census shall divide his district into subdivisions most convenient for the purpose of enumeration, and designate and employ suitable persons as enumerators within his district, one for each subdivision, a resident therein; to transmit to the enumerators printed forms and schedules prepared by the superintendent in quantities suitable to the requirements of such subdivision; to communicate to the enumerators information, instructions, and directions relative to their duties, and the methods relative to taking the census, and to advise with and counsel enumerators in person and by letter as fully as may be required to fulfill the purposes of this act; to provide for the early and safe transmission to his office of the returns of the enumerators, embracing all the schedules filled by them in the course of enumeration, and for the due receipt and custody of such returns, and for their transmission to the superintendent; to examine and scrutinize the returns of the enumerators, in order to ascertain whether or not the work has been performed in all respects in compliance with the provisions of law, and whether any city, village, or integral portion of the district has been omitted from the enumeration; to forward to the superintendent of census the complete returns of his district, in such time and manner as shall be prescribed by such superintendent, and in case of any error in the returns, to use all diligence in causing the same to be corrected or supplied; to make up returns to the superintendent of accounts required for ascertaining the amount due under the provisions of this act to each enumerator in his district. (*Id.* § 4.)

§ 5. **Compensation of supervisors.** The supervisor of census for South Dakota shall, upon the completion of his duties, receive the sum of eight hundred dollars, and the supervisor of census for North Dakota shall receive the sum of six hundred dollars, in full compensation for all services rendered and expenses incurred by them, except an allowance for clerk hire may be made in the discretion of the superintendent of census. (*Id.* § 5.)

§ 6. **Enumerator—oath.** Each enumerator, upon receiving his appointment, shall take and subscribe the following oath: "I, ———, an enumerator for taking the census of the territory of Dakota, do solemnly swear that I will make a true and exact enumeration of all the inhabitants within the subdivision assigned to me, and will also faithfully collect all other statistics therein, as provided for in the act for taking the census, and in conformity with all lawful instructions which I may receive, and will make due and correct returns thereof, as required by this act; and will not disclose any information contained in the schedules, lists, or statements obtained by me, to any person or persons, except to my superior officers;"—which oath may be administered by any person authorized to administer oaths under the laws of this territory, and shall be forwarded to the supervisor of census before the date herein fixed for the commencement of the enumeration. And the duties of the enumerators shall be the same as provided by chapter one hundred and ninety-five of the United States Statutes at Large, approved March third, eighteen hundred and seventy-nine, entitled, "An act for taking the tenth and subsequent censuses," and their compensation shall be the same as provided for the compensation of enumerators under said act, and they shall be subject to the same penalties for neglect of duty as in said act provided. (*Id.* § 6.)

§ 7. **Blanks and forms.** The blanks and forms used in taking such census shall be the same as those required by the laws of the United States for taking the tenth census, and the superintendent of census shall obtain such facts and information in relation to railroads, express, telegraph, and insurance companies within this territory as were required to be obtained by the superintendent of census under the act of congress of March third, eighteen hundred and seventy-nine, in relation to the tenth census. (*Id.* § 7.)

§ 8. **Enumeration, how and when taken.** The enumeration required by this act shall commence on the first Monday of June, and shall be taken as of that date, and each enumerator shall prosecute the canvass of his subdivision from that day forward on each week-day without intermission, except from sickness or other urgent cause; and any unnecessary cessation of his work shall be sufficient ground for his removal and the appointment of another person in his place; and any person so appointed shall take the oath required of enumerators, and shall receive compensation at the same rate; and it shall be the duty of each enumerator to complete the enumeration of his district on or before the first day of July, eighteen hundred and eighty-five. (*Id.* § 8.)

§ 9. **Removal of enumerator.** The supervisor of census may remove any enumerator in his district, and fill any vacancy thereby caused or otherwise occurring; and in such case but one compensation shall be allowed for the entire service, to be apportioned among the persons performing the same, in the discretion of the supervisor of the census. (*Id.* § 9.)

§ 10. **Appropriation for expenses.** There is hereby appropriated out of the territorial treasury a sum of money sufficient to carry out the provisions of this act, and upon the approval of any amount [account] by the governor, on filing the proper voucher therefor, the territorial auditor is hereby authorized to draw his warrant upon the territorial treasurer for the payment of the same. (*Id.* § 10.)

§ 11. **Printing blanks.** The governor or superintendent of census is hereby authorized and required to cause to be printed the necessary blanks for carrying out the provisions of this act, which printing shall be done by the lowest responsible bidder. (*Id.* § 11.)

§ 12. **Disposition of moneys received.** The sums of money received by the governor for taking the census, as herein provided, from the United States, as provided by section twenty-two of chapter one hundred and ninety-five of the Statutes at Large of the United States, approved March third, eighteen hundred and seventy-nine, shall be paid into the territorial treasury for the benefit of the general fund. (*Id.* § 12.)

CHAPTER VIII.

STATISTICS.

An Act Providing for the Collection and Compilation of Statistics of the Territory of Dakota.

§ 1. **Duty of township assessor.** It shall be the duty of the county or township assessor of each organized county of the territory to obtain at each annual assessment of real and personal property in his county the following statistics, to-wit: The assessed value of all real and other personal property in the county; the number of acres of land under cultivation; the number of acres and estimated yield in each kind of grain, and the total number of acres assessed in the county; the number of horses, cattle, hogs, and other live-stock; the number of townships and parts of townships, and the total areas of land and water, in the county; and the male and female population of the county. The county or township assessors shall be required, within thirty days after the date of the return of the said annual assessment, to transmit the statistics obtained as provided for in this section to the commissioner of immigration, and *ex officio* territorial statistician, who shall compile and preserve the same as required by law. (*Sess. Laws* 1885, *c.* 137, § 1.)

§ 2. **Duty of clerks and auditors.** It shall be the duty of township, village, city, or county clerks, and county auditors, to prepare certified statements, on the first day of January and on the first day of June of each year, showing the amount of township, village, city, and county indebtedness of all kinds; giving the amount and character of all bonds issued, the term of years such bonds are to run, the interest payable on same, the date of issue, and the price paid for such bonds, and showing the amount and character of all floating and outstanding indebtedness. The said statements shall be transmitted on or before the fifteenth day of January and the fifteenth day of June of each year, to the commissioner of immigration and *ex officio* territorial statistician, for compilation and preservation as required by law. (*Id.* § 2.)

§ 3. **Duty of coroners.** It shall be the duty of the coroner of each organized county of the territory to obtain the following statistics, to-wit: the number of deaths; the ages and the nativity of deceased, and the cause of their decease; the number of births, male and female; and the number of marriages, and nativity and ages of the parties contracting in marriage, in the county for the six months, each preceeding the first day of January and the first day of June of each year; and to transmit the same within fifteen days thereafter to the commissioner of immigration and *ex officio* territorial statistician for compilation and preservation as required by law. (*Id.* § 3.)

§ 4. **Blanks, etc., to be furnished.** The commissioner of immigration and *ex officio* territorial statistician shall be required to furnish to the several officers herein named the necessary blanks, stationery, and postage, and the expense incurred in procuring and furnishing the same shall be paid by the territorial treasurer on the warrant of the territorial auditor, which shall be issued on presentation of the sworn expense account of the commissioner of immigration and *ex officio* territorial statistician, when approved by the governor. (*Id.* § 4.)

CHANGES IN
LEVISEES' DAKOTA CODES,
AS EFFECTED BY THE
ACTS OF THE LEGISLATURE OF 1885.

NOTE.—The reference under each Section is to the page of Levisees' Dakota Codes.

CODE OF CIVIL PROCEDURE.

PART II.

CIVIL ACTIONS.

CHAPTER IX.

MANNER OF COMMENCING CIVIL ACTIONS.

§ 101. **Lis pendens—effect of.** In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a warrant of attachment of property shall be issued, or at any time afterwards, the plaintiff, or defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property, may file for record* with the register or deeds of each county in which the real property is situated, a notice of the pendency of the action containing the names of the parties, the object of the action, and the description of the real property in that county affected thereby. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby, and every person whose conveyance or incumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or incumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: *provided*, *however*, that such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may at any time, on application of any person aggrieved, and on good cause shown, and on such notice as shall be directed or approved by the court, order the notice authorized by this section to be canceled of record in whole or in part by the register of deeds of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record, which shall refer to the order, and for which the register of deeds shall be entitled to a fee of twenty-five cents. (*As amended*, *Sess. Laws* 1885, *c.* 117, § 1.)

See page 25.

§ 103, subsec. 2. Repealed. (*Sess. Laws* 1885, *c.* 138, § 1.)

See page 27.

§ 107, subd. 1. **Proof of service—acceptance.** Amended by inserting the words "or other officer" after the word "sheriff," in subdivision one of said section. (*Sess. Laws* 1885, *c.* 125, § 1.)

See page 30.

CHAPTER X.

PLEADINGS IN CIVIL ACTIONS.

GENERAL RULES OF PLEADING.

§ 126. **Requisites of verification.** The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated on information and belief, and as to those matters he believes it to be true, except where it is made by any person other than a party to the action, in which case it must be to the effect that the same is true to the best knowledge, information, and belief of the person making it; and such verification must be by the affidavit of the party, or if there be several parties united in interest and pleading together, by one at least of such parties acquainted with the facts, if such party be within the county where the attorney resides and capable of making the affidavit. The affidavit may also be made by the agent or attorney, if the party is absent from the county in which such attorney resides, or is not a resident thereof; and when the pleading is verified by any other person than the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof; and when the territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony, and no pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in such pleading. (*As amended, Sess. Laws* 1885, *c.* 149, § 1.)

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* The words "for record" inserted. (*Sess. Laws* 1885, *c.* 118, § 1.)

See page 38.

*§ 137*a*. **Allegations, when deemed true or denied.** In all civil actions brought by or against a corporation, it shall not be necessary to prove, on the trial of the cause, the existence of such corporation, unless the defendant shall, in his answer, expressly aver that the plaintiff or defendant is not a corporation. (*Sess. Laws* 1885, *c.* 37, § 1.)

See page 42.

CHAPTER XI.

PROVISIONAL REMEDIES.

ARTICLE IV.—ATTACHMENT.

§ 218. **Action before claim due.** Amended by striking out the following words in the last paragraph thereof: "But judgment must not be rendered in the action under the debt or claim upon which such attachment is made and shall become due and payable," and inserting instead thereof the following: "but judgment must not be rendered in the action until the debt or claim upon which such attachment is made shall become due and payable." (*Sess. Laws* 1885, *c.* 18, § 1.)

See page 65.

CHAPTER XII.

TRIAL AND JUDGMENT IN CIVIL ACTIONS.

ARTICLE II.—ISSUES AND MODE OF TRIAL.

§ 236. **By whom triable.** An issue of law must be tried by the court or by the judge. An issue of fact for the recovery of money only, or of specific real or personal property, must be tried by a jury, unless a jury trial be waived as provided in section two hundred and sixty-five. Every other issue is triable by the court, which, however, may order the whole issue, or any specific question of fact involved therein, to be tried by a jury, or may refer it as provided in sections two hundred and seventy-one and two hundred and seventy-two. (*As amended, Sess. Laws* 1885, *c.* 146, § 1.)

§ 237. **Single judge—issues, how tried.** All issues of fact, triable by a jury or by the court, must be tried before a single judge. Issues of fact must be tried at a regular term of the district court, when the trial is by jury; otherwise, at a regular or special term, as the court may by its rules prescribe. Issues of law must be tried at a regular or special term of the district court, or by the court in vacation or judge at chambers. If by the court in vacation, or judge at chambers, the same may be heard, tried and determined in any county of the district within which the action is brought, and judgment thereon entered in the proper county, upon the giving by either or any party of the notice prescribed by section two hundred and thirty-eight of the Code of Civil Procedure; but in such case no note of issue need be filed. And any judgment, final decision, or actual determination, made upon such trial and hearing, may be appealed from in the same manner, and subject to the same rules and provisions, as in cases of other appeals from actual determinations and final decisions of any regular or special terms of the district courts of this territory. (*As amended, Sess. Laws* 1885, *c.* 147, § 1.)

See page 70.

*§ 240*a*. **Struck jury.** Whenever a struck jury is deemed necessary by either party for the trial of the issue in any action or proceeding in the district court, or brought there by appeal or otherwise, such party may file with the clerk of the court a demand in writing for such jury, whereupon such clerk shall forthwith deliver a certified copy of such demand to the sheriff of the county, who shall give to both parties four days' notice of the time of the striking of the same. At the time designated said sheriff shall attend at his office, and in the presence of the parties, or their attorneys, or such of them as attend for that purpose, shall select from the number of persons qualified to serve as jurors within the county, forty such persons as he shall think most indifferent between the parties, and best qualified to try such issue. And then the party requiring such jury, his agent or attorney, shall first strike off one

of the names, and the opposite party, his agent or attorney, another, and so on alternately until each have struck out twelve. . If either party shall not attend in person, or by attorney, the sheriff shall strike for the party not attending. When each party has stricken out twelve names as aforesaid the sheriff shall make a fair copy of the names of the remaining sixteen persons, and certify the same under his hand to be the list of jurors struck for the trial of such cause or proceeding, and shall deliver the same to the clerk, who shall thereupon issue and deliver to the sheriff or other officer a *venire facias*, with the names in said list contained, annexed thereto; and such sheriff or other officer shall summon the persons named according to the command of the writ; and upon the trial of the cause, the jury so struck shall be called as they stand upon the panel, and the first twelve of them who shall appear, and are not challenged for cause or set aside by the court, shall be the jury, and shall be sworn to try the issue joined in said cause or proceeding: *provided*, a sufficient number does not appear for the trial of said cause, the court shall cause talesmen to be called as in other cases. (*Sess. Laws* 1885, *c.* 84, § 1.)

*§ 240*b*. **Selection of jury when sheriff interested.** If the said sheriff is interested in the cause or proceeding, or related to either of the parties, or does not stand indifferent between them, the judge of the said court may name some judicious and disinterested person to select and strike the jury, and to do and perform all things required to be done by such sheriff, relating to the striking of the same; but in no case shall it be necessary to strike such jury more than six days previous to the term of the court at which the action or proceeding is to be tried, and three days' service of the venire shall be held sufficient. (*Id.* § 2.)

*§ 240*c*. **Fees.** The party requiring such struck jury shall pay the fees for striking the same, and the legal fees for mileage and attendance, for each juror so attending, and shall not have any allowance therefor in the taxation of costs. (*Id.* § 3.)

*§ 240*d*. **Allowance by judge—notice.** No struck jury shall be had under the provisions of this act unless the same has been allowed by the court or judge thereof, on due notice: *provided*, that this act shall not be construed to apply to trials and juries in criminal cases. (*Id.* § 4.)

See page 71.

CHAPTER XIII.

EXECUTION OF JUDGMENT IN CIVIL CASES.

EXEMPTIONS.

*§ 326*a*. **Schedule of property of debtor.** Whenever any debtor against whom an execution, warrant of attachment, or other process has been issued, desires to avail himself of the benefit of section 324 of this Code, the said debtor, his agent or attorney, shall make a schedule of all

his personal property of every kind and character, including money on hand and debts due and owing to the debtor, and deliver the same to the officer having the execution, warrant of attachment, or other process, which said schedule shall be subscribed and sworn to by the debtor, his agent or attorney, and any property owned by the debtor, and not included in said schedule, shall not be exempt as aforesaid. (*Sess. Laws* 1885, *c.* 55, § 1.)

See page 96.

§ 328. **Oath and duties of appraisers.** Amended by striking out, "The property must be appraised at the usual price of such articles at sheriff's sales," and inserting instead thereof the following: "The property must be appraised at the actual value of the several articles at the place where they are situated." (*Id.* § 2.)

See page 97.

*§ 333*a*. **Persons having no exemptions — partnerships.** Add subd. 6: "No exemptions, except the absolute exemptions, shall be allowed any person against an execution or other process issued upon a debt incurred for property obtained under false pretenses." (*Id.* § 3.)

See page 98.

SALES.

§ 339. **Postponements.** When there are no bidders, or when the amount offered is grossly inadequate, or when, from any cause, the sale is prevented from taking place on the day fixed, the sheriff may postpone the sale for not more than three days, without being required to give any further notice thereof; but he shall not make more than two such postponements, and such postponement must be publicly announced when and where the sale should have taken place. (*As amended*, *Sess. Laws* 1885, *c.* 136, § 1.)

See page 100.

CHAPTER XV.

COSTS AND DISBURSEMENTS.

§ 378. **Attorney's fees in written instruments.** The repealing act of March 2, 1883, repealed; and section three hundred and seventy-eight of the Code revived. (*Sess. Laws* 1885, *c.* 39, §§ 1, 2.)

See page 113.

CHAPTER XVI.

APPEALS IN CIVIL ACTIONS.

§ 414. **Undertaking required.** Amended by adding thereto after the word "respondent" the following words: "*Provided*, that this section shall not apply to the territory of Dakota or any county thereof, and no bond shall in any action or proceeding be required of the territory of Dakota, or any county thereof, on any appeal to any court of the territory of Dakota, or to the supreme court of the United States, when the territory or any county shall be the party directly interested therein." (*Sess. Laws* 1885, *c.* 7, § 1.)

See page 122.

CHAPTER XXI.

EVIDENCE IN CIVIL ACTIONS.

§ 468. **Affidavit, where and how made.** An affidavit may be made in and out of this territory before any person authorized to administer an oath. (*As amended, Sess. Laws* 1885, *c.* 2, § 1.)

See page 133.

CHAPTER XXII.

MOTIONS AND ORDERS.

§ 511. **Service of notice.** When notice of motion is necessary, it must be served eight days before the time appointed for the hearing; but the court or judge may, by order to show cause, prescribe a shorter time. (*As amended, Sess. Laws* 1885, *c.* 119, § 1.)

See page 141.

CHAPTER XXVIII.

FORECLOSURE OF MORTGAGES.

FORECLOSURE BY ADVERTISEMENT.

*§ 606*a*. **Sheriff's fees on sale.** The sheriff making the sale of real property under the foreclosure of mortgages by advertisement, shall receive the same fees, and no more, that are now, or may hereafter be,

provided by law for the sale of real property under a judgment of foreclosure and sale of real property. (*Sess. Laws* 1885, *c.* 56, § 1.)

See page 161.

CHAPTER XXXII.

ACTIONS TO FORECLOSE LIENS ON CHATTELS.

*§ 675*a*. **Foreclosure of chattel mortgage—notice.** A chattel mortgage, when the conditions of the same have been broken, may be foreclosed by a sale of the property mortgaged, upon the notice, and in the manner following: The notice shall contain—

1. The names of the mortgagor and mortgagee, and the assignor, if any.
2. The date of the mortgage.
3. The nature of the default, and the amount claimed to be due thereon at the date of the notice.
4. A description of the mortgaged property conforming substantially to that contained in the mortgage.
5. The time and place of sale.
6. The name of the party, agent, or attorney foreclosing such mortgage.

(*Sess. Laws* 1885, *c.* 32, § 1.)

*§ 675*b*. **Posting of notice.** Such notice shall be posted in five public places in the county where the property is to be sold, at least ten days before the time therein specified for such sale. (*Id.* § 2.)

*§ 675*c*. **Who may become purchaser.** The mortgagee, his assigns, or any other person, may, in good faith, become a purchaser of the property sold. (*Id.* § 3.)

*§ 675*d*. **Attorney's fee.** Such attorney fee as shall be specified in the mortgage may be taxed and made a part of the costs of foreclosure: *provided,* such mortgage is foreclosed by an attorney of record of this territory, and the name of such attorney appears as attorney on the notice of sale; and in no other cases shall an attorney fee be allowed. (*Id.* § 4.)

*§ 675*e*. **Construction of statute.** This act shall not be construed to affect the provisions relating to foreclosure of chattel mortgages by action. (*Id.* § 5.)

See page 177.

PART III.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

CHAPTER XXXVI.

CHANGING NAMES OF TOWNS AND VILLAGES.

*§ 737*a*. **Petition to be filed.** When any number of the inhabitants of any town or village shall desire to change the name thereof, there shall be filed in the office of the county clerk or county auditor a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said town or village, setting forth the name by which said town or village is known, its location, as near as practicable, and giving the name which they desire the town shall thereafter be known by. (*Sess. Laws* 1885, *c.* 31, § 1.)

*§ 737*b*. **Notice to be posted.** Notice of the filing of said petition, and the time and place when the same shall be heard, and the objects and purposes thereof, shall be given by posting up a written or printed notice in at least five public places in the town or village, the name of which is sought to be changed, at least four weeks before the meeting of the board of county commissioners. (*Id.* § 2.)

*§ 737*c*. **Hearing on petition.** At the next regular meeting of the board of county commissioners after said notices shall have been posted as aforesaid, said board shall proceed to hear and determine said petition, unless said hearing is, for good cause, continued until the next meeting; and said board shall, on the hearing of said petition, also hear any remonstrance against the proposed change, and if, on the hearing, it shall appear to the said board that two-thirds of the qualified electors of said town or village in good faith signed said petition for change of name and desired the same, then the said board shall order said name to be changed as prayed for. (*Id.* § 3.)

*§ 737*d*. **Order of board—publication of.** Said order of the board shall thereupon be entered of record, giving the name of said town or village as set forth in said petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter, and directing that notice of said change shall be published in at least one newspaper published in said county, if any; and if there is no newspaper published in said county, then said notice shall be published by posting the same for four weeks on the front door of the court-house

where the last term of the district court of said county was held. (*Id.* § 4.)

*§ 737*e*. **Proof of publication to be filed.** The ordinary proof of such publication shall be filed in the office of the county clerk or county auditor, and shall be by him filed for preservation; and on the day fixed by the board as aforesaid the change shall be complete: *provided*, that whenever the name of any town or village shall be changed by virtue of the provisions of this act, the county clerk or county auditor shall immediately notify the register of deeds, who shall note the change of name upon the plat of said town or village, with the date thereof. (*Id.* § 5.)

*§ 737*f*. **Costs of proceedings.** In all cases arising under the provisions of this act, where there is no remonstrance or opposition to said petition, the petitioners shall pay all costs; but in all other cases costs shall abide the result of the proceedings, and be taxed to either party in the discretion of the board, or divided equally between the parties. (*Id.* § 6.)

See page 189.

PROBATE CODE.

CHAPTER I.

JURISDICTION.

*§ 3. **Non-resident to appoint agent upon whom summons may be served.** Every executor, administrator, or guardian appointed in but residing out of the territory, shall, before entering upon the duties of his trust, in writing, appoint an agent residing in the county where he is appointed, and shall by such writing stipulate and agree that the service of any legal process against him as such executor, administrator, or guardian, if made on said agent, shall be of the same legal effect as if made on himself personally within the territory. Such writing shall give the proper address of such agent, and shall be filed in the office of the judge of the probate court where such appointment is made. (*Sess. Laws* 1883, *c.* 106, § 1.)

*§ 3*a*. **Notice by publication—when.** If any executor, administrator, or guardian has absconded or conceals himself, or has removed or absented himself from the territory, notice may be given him of the pendency of any proceedings in which he is interested in any court, by publication in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served. (*Id.* § 2.)

See page 200.

JUSTICES' CODE.

CHAPTER I.

CIVIL PROCEEDINGS.

ARTICLE III.—MANNER OF COMMENCING ACTIONS.

§ 15. **Time for defendant's appearance.** The time specified in the summons for the appearance of the defendant shall in all cases be not less than three nor more than twelve days from the date of the service of the same. (*As amended, Sess. Laws* 1885, *c.* 139, § 1.)

See page 290.

§ 17. **Who may serve summons — publication — clerk's certificate.** Subsection two of section seventeen of the Justices' Code repealed. (*Sess. Laws* 1885, *c.* 138, § 2.)

See page 291.

ARTICLE IX.—TIME OF TRIAL AND POSTPONEMENT.

§ 47. **On application by party — requisites.** Amended by adding at the end of said section the following: "And if the trial be postponed, the depositions of witnesses residing out of the county or territory may be taken, either upon commission issued by the justice, or upon notice to take depositions in the same manner as is provided by the Code of Civil Procedure; and such depositions shall, when completed, be directed to the justice, and be published by the justice in the same manner as depositions are published by the clerk of the district court." (*Sess. Laws* 1885, *c.* 86, § 1.)

See page 297.

CHAPTER II.

CRIMINAL PROCEEDINGS.

§ 112. **Change of venue.** Amended by adding the following proviso: "*Provided*, that this section shall apply to all examinations and proceeding under chapter three of title two of the Code of Criminal Procedure, relating to the jurisdiction and duties of justices of the peace in cases of security to keep the peace; and also to examinations held under or pursuant to chapter seven of title four of said Code, in all cases where the person complained of is not brought before a judge of the supreme court, or of the district court." (*Sess. Laws* 1885, *c.* 85, § 1.)

See page 310.

CHAPTER IV.

DISTRIBUTION OF JUSTICES' CODE.

An Act Authorizing County Boards to Purchase the "Dakota Justice Court Practice, Civil and Criminal," for Justices of the Peace.

§ 1. **Duty of county boards.** That the county board of each county in the territory of Dakota is hereby authorized to purchase for each justice of the peace in their respective counties, at a price not exceeding five dollars per volume, one copy of the "Dakota Justice Court Practice, Civil and Criminal," prepared, copyrighted, and published by Americus B. Melville. (*Sess. Laws* 1885, *c.* 87, § 1.)

§ 2. **Warrant for payment.** Whenever any county board shall purchase and receive one or more of said books, the chairman of said board, together with the county clerk, shall sign a warrant of the county in an amount equal to the price agreed to be paid for said books, and shall deliver the same on demand to the publisher. (*Id.* § 2.)

See page 315.

POLITICAL CODE.

CHAPTER II.

LEGISLATURE.

§ 13. **Chief clerks to prepare and index journals.** Amended by striking out the word "forty," where it occurs in said section, and inserting in lieu thereof the word "sixty." (*Sess. Laws* 1885, *c.* 110, § 1.)

NOTE. Printing and binding legislative journals. (*Joint Res. Sess. Laws* 1885, *c.* 97.)

See page 319.

CHAPTER III.

STATUTES.

§ 4. **To whom and how distributed.** The following named officers of this territory and of the counties therein, and none other, shall be entitled to receive, without cost, one copy each of the printed volumes of the Code and Session Laws of Dakota, published or purchased by the legislative assembly of this territory for distribution, under the provisions of this act, to-wit: The chief justice of the supreme court of Dakota, each associate justice of said court; each clerk of the district court; the United States attorney for Dakota; the United States marshal for Dakota; the governor of the territory; the secretary of the territory; the auditor; the treasurer; the superintendent of public instruction; each district attorney; each judge of the probate court; each sheriff; each register of deeds; each county clerk or county auditor; each county treasurer; each county justice of the peace; each coroner; each county superintendent of public schools; each county assessor; chairman of the board of county commissioners; each library association or historical society organized for the benefit of the public in any county or town in this territory; and to each member of the legislative assembly, a copy of the laws enacted by the assembly of which he was a member. (*Sess. Laws* 1885, *c.* 46, § 1.)

See page 321.

*§ 12. **Distribution of laws.** *Be it enacted*, *etc.*, that the secretary of the territory be authorized to purchase forty copies of the Code

of eighteen hundred and seventy-seven, and seventy-two copies each of all such Session Laws as have been published since said Code, and that said secretary also be authorized to purchase thirty-two copies Levisee's Code, such Codes to be distributed to the members of this legislature, and that the sum of seven hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the territory not otherwise appropriated, to pay for such Codes and Session Laws. (*Joint Res. Sess. Laws* 1885, *c.* 10, § 1.)

Act to purchase and distribute two hundred and fifty copies of volume three of Dakota Reports (*Sess. Laws* 1885, *c.* 17, *p.* 24.)

See page 324.

CHAPTER V.

QUALIFICATIONS FOR OFFICE.

*§ 15. **Recording of official bonds of civil officers.** The bonds of all county, township, and precinct officers, immediately after the approval of the same, shall be recorded at length in the office of the register of deeds of the county to which such bonds are given, in a book to be provided and kept for that purpose. When the said bonds are so recorded, they shall be forthwith filed respectively, as provided in section five of chapter five of the Political Code. (*Sess. Laws* 1885, *c.* 120, § 1.)

*§ 16. **Bonds now on file to be recorded.** Upon the taking effect of this act, the bonds of all such officers as are now in office shall be taken from the files by the persons having the custody of the same, recorded at length by the register of deeds, as provided in section one of this act, and thereupon returned forthwith to the files, from which they were taken respectively. (*Id.* § 2.)

*§ 17. **Fees of register of deeds.** The register of deeds shall be entitled to charge and receive a fee of fifty cents for recording each official bond recorded by him pursuant to this act, to be paid by the principal in said bond. (*Id.* § 3.)

See page 327.

CHAPTER X.

TERMS OF SUPREME COURT.

§ 1. **Three terms annually.** There shall be held three terms annually of the supreme court, as follows: One term at Bismarck, commencing on the first Tuesday of February; one term at Yankton, commencing on the second Tuesday of May; and one term at Deadwood, commencing on the first Tuesday of October. (*As amended, Sess. Laws* 1885, *c.* 140, § 1.)

See page 334.

CHAPTER XIII.

SUBDIVISION OF JUDICIAL DISTRICTS.

*§ 6*a*, subsec. 9, added. **Second district — Miner county.** The county of Miner shall constitute a judicial subdivision of the Second judicial district. (*Sess. Laws* 1885, *c.* 72, § 1.)

Subsec. 10, added. **Term of court.** One term of the district court is hereby appointed to be held therein at Howard, the county seat of Miner county, on the first Tuesday of May of each year, and such other special terms of the district court may be held in said county in each year at said county seat as the judge of said district may appoint. (*Id.* § 2.)

See page 629.

*§ 7, subsec. 10, added. **Third district—Ransom and Sargent counties.** The counties of Ransom and Sargent, in the territory of Dakota, shall constitute one judicial subdivision in the Third judicial district, and the district court therein shall be held at the county seat of said Ransom county, on the second Thursday of March in each year. (*Sess. Laws* 1885, *c.* 73, § 1.)

Subsec. 11, added. **Change of venue—proceedings.** All actions or proceedings, civil or criminal, now pending in the subdivision formerly composed of the counties of Richland, Ransom, and Sargent, which properly belong in said counties of Ransom and Sargent, under the provisions of the Code of Civil Procedure and Code of Criminal Procedure, the venue thereof may be changed, by order of the court or judge thereof, upon the demand of either party, which demand shall be served upon the opposite party or his attorney, if either can conveniently be found in the territory; but if neither can conveniently be found in the territory, then such change of venue may be made as herein provided, upon the filing such demand with the clerk of the district court of said Richland county (*Id.* § 2.)

Subsec. 12, added. **Process, writs, etc.—return of.** All process, writs, bonds, notices, appeals, continuances, recognizances, and proceedings in actions arising or properly belonging in said Ransom or Sargent counties, issued and made returnable to the terms of the district court in said Richland county, as fixed by law prior to the passage of this act, shall be taken and considered as made, taken, and returnable to the terms of said district court for Ransom and Sargent counties, as fixed by this act. (*Id.* § 3.)

Subsec. 13, added. **Nelson county.** The county of Nelson, in the territory of Dakota, be, and the same is hereby, created a legal subdivision of the Third judicial district of Dakota. (*Sess. Laws* 1885, *c.* 74, § 1.)

Subsec. 14, added. **Term of court.** There shall be held on the third Monday of August in each year, at Lakota, the county seat of said county, a term of court for the trial of all causes within the jurisdiction thereof. (*Id.* § 2.)

Subsec. 15, added. **Ramsey and Towner counties.** The counties of Ramsey and Towner are hereby created and constituted a subdivision of the Third judicial district. (*Sess. Laws* 1885, *c.* 77, § 1.)

Subsec. 16, added. **Terms of court.** The judge of the third judicial district shall annually appoint and hold terms of the district court for said subdivision at Devil's Lake, the county seat of said Ramsey county, and the county of Towner is attached to Ramsey county for judicial purposes. (*Id.* § 2.)

Subsec. 17, added. **Sargent county.** Upon a petition signed by a majority of the board of county commissioners of Sargent county, the judge of the district court within and for said Third judicial district shall, by an order to that effect, create the county of Sargent a judicial subdivision; and, upon the making of such order, the said county of Sargent shall be and become a judicial subdivision, and such judge may hold court at the county seat of said county at such time as he may elect. (*Sess. Laws* 1885, *c.* 76, § 1.)

Subsec. 18, added. **Pending actions to be transferred.** Whenever said county shall have been created a subdivision under the provisions of this act, the judge shall order all actions or proceedings that may at that time be pending in the counties of Richland or Ransom, properly belonging to said Sargent county, to be transferred, together with all papers and files relating to such actions or proceedings, to the clerk of the district court of said Sargent county. (*Id.* § 2.)

Subsec. 19, added. **Repealing clause.** All acts and parts of acts in conflict with this act are hereby repealed. (*Id.* § 3.)

Subsec. 20, added. **Effect of act.** This act shall take effect and be in force from and after the fifteenth day of April, 1885. (*Id.* § 4.)

See page 630.

Richland county a subdivision. The county of Richland shall constitute one subdivision of the Third judicial district, and the district court shall be held therein, at the county seat of said Richland county, on the fourth Tuesday of March and the first Tuesday of October of each year. (*Sess. Laws* 1885, *c.* 75, § 1.)

See page 630.

*§ 8, subsec. 13, added. **Fourth judicial district—subdivisions of.** The counties of Union, Clay, Lincoln, Turner, Minnehaha, McCook, Moody, and Lake shall constitute the Fourth judicial district, and each of said counties shall constitute a judicial subdivision, and the terms of the district court shall be held therein as follows, to-wit:

Clay county, the first Tuesday in February and the first Tuesday in September.

Union county, the third Tuesday in February and the third Tuesday in September.

Lincoln county, the fourth Tuesday in February and the fourth Tuesday in September.

Turner county, the second Tuesday in March and the third Tuesday in October.

Minnehaha county, the second Tuesday in April and the second Tuesday in November.

McCook county, fourth Tuesday in May.

Lake county, first Tuesday in June.

Moody county, the third Tuesday in June and the first Tuesday in January.

(*Sess. Laws* 1885, *c.* 78, § 1.)

See page 631.

*§ 8*a*. **Fifth judicial district.** The counties of Roberts, Day, Brown, McPherson, Edmunds, Campbell, Walworth, Potter, Faulk, Sully, Hughes, Hyde, Hand, Spink, Beadle, Clark, Codington, Grant, Duel, Hamlin, Kingsbury, and Brookings, shall constitute the Fifth judicial district, and each of said counties shall constitute a judicial subdivision, excepting the counties of Edmunds, McPherson, Campbell, and Walworth, which counties shall constitute one judicial subdivision; and in case of the organization of the county of Marshall the said county shall be attached to the county of Day for judicial purposes, and the terms of the district court shall be held therein as follows, to-wit:

Brookings. The second Tuesday in June and the second Tuesday in December.

Kingsbury. The third Tuesday in June and the third Tuesday in December.

Codington. The first Tuesday in June and the first Tuesday in December.

Deuel. The fourth Monday in May.

Hamlin. The fourth Tuesday in November.

Hughes. The second Tuesday in April and the second Tuesday in September.

Hand. The fourth Tuesday in April and the third Tuesday in October.

Beadle. The first Tuesday in May and the first Tuesday in October.

Spink. The second Tuesday in July and the second Tuesday in January.

Brown. The third Tuesday in July and the third Tuesday in January.

Grant. The third Tuesday in March and the third Tuesday in November.

Edmunds, etc. Edmunds, McPherson, Walworth, and Campbell shall constitute one judicial subdivision of the Fifth judicial district; and a term of court shall be held in Edmunds county on [the] second Tuesday in September.

Hyde. A term of court shall be held in Hyde county, commencing on the third Tuesday in September.

Sully. A term of court shall be held in the county of Sully, commencing on the fourth Tuesday in October.

Marshall and Day. The counties of Marshall and Day shall constitute one judicial subdivision, and a term of court shall be held in the county of Day, commencing on the second Tuesday of August.

Potter. A term of court shall be held in Potter county, the third Tuesday of February.

Faulk. At such time in the year 1885 as the judge of said district may designate, and thereafter there shall be two terms of court annually held in said county on the first Tuesday of September and fourth Tuesday of January.

Clark. Terms of court shall be held on the first Tuesday of February and third Tuesday in August.

In other counties of said district, not otherwise provided for, at least one term shall be held each year, and two if deemed necessary by the judge, at such times as he shall designate. (*Sess Laws* 1885, *c.* 79, § 1.)

*§ 8*b*. **Repeal.** All acts and parts of acts in conflict with provisions of this act are hereby repealed. (*Id.* § 2.)

*§ 8*c*. **Sixth judicial district.** The Sixth judicial district of the territory of Dakota shall consist of the following counties in said territory, namely: Bowman, Villard, Billings, Dunn, McKenzie, Allred, Buford, Flannery, Wallace, Mountraille, Williams, Stark, Hettinger, Boreman, Morton, Mercer, McLean, Ward, Stevens, Renville, Wynn, Bottineau, McHenry, Sheridan, Burleigh, Emmons, McIntosh, Logan, Kidder, Wells, De Smet, Rolette, Benson, Foster, Eddy, Stutsman, La Moure, Dickey, Griggs, Steele, and Barnes. (*Sess. Laws* 1885, *c.* 81, § 1.)

*§ 8*d*. **Division of.** The said Sixth judicial district be, and the same is hereby, divided into subdivisions as follows: The first subdivision shall consist of the counties of Burleigh, Emmons, McLean, Stevens, Boreman, Sheridan, Mountraille, Flannery, and Buford. The district court in and for this subdivision shall be held at the city of Bismarck, in the county of Burleigh, on the first Tuesday in March and the first Tuesday in September in each year. (*Id.* § 2.)

*§ 8*e*. **Second subdivision.** The second subdivision shall consist of the counties of Morton, Stark, Hettinger, Boreman, Bowman, Villard, Billings, Dunn, McKenzie, Allred, Wallace, Williams, and Mercer. The district court in and for this subdivision shall be held at the city of Mandan, in the county of Morton, on the second Tuesday of August of each year. (*Id.* § 3.)

*§ 8*f*. **Third subdivision.** The third subdivision shall consist of the counties of Kidder, Logan, and McIntosh. The district court in and for this subdivision shall be held at the city of Steele, in the county of Kidder, at such time as the judge may direct in each year. (*Id.* § 4.)

*§ 8*g*. **Fourth subdivision.** The fourth subdivision shall consist of the counties of Stutsman, Foster, Wells, and La Moure. The district court in and for this subdivision shall be held at the city of Jamestown, in the county of Stutsman, on the second Tuesday in November of each year, and one term commencing second Tuesday in April, 1885, shall be held. (*Id.* § 5.)

*§ 8*h*. **Fifth subdivision.** The fifth subdivision shall consist of the counties of Barnes, Griggs, and Steele. The district court in and for this subdivision shall be held at the city of Valley City, in the county of Barnes, on the second Tuesday in July of each year. (*Id.* § 6.)

*§ 8*i*. **Sixth subdivision.** The sixth subdivision shall consist of the counties of Benson, Rolette, Bottineau, McHenry, Ward, De Smet, Eddy, Wynn. The district court in and for this subdivision shall be held at the town of Minnewaukan, in the county of Benson, on the second Tuesday in January of each year. (*Id.* § 7.)

*§ 8*j*. **Seventh subdivision.** The seventh subdivision shall consist of the county of Dickey. The district court in and for this subdivision shall be held at Ellendale, at such time in each year as the judge of said court may direct. (*Id.* § 8.)

*§ 8*k*. **Actions and proceedings.** All actions and proceedings, both civil and criminal, now pending in any subdivision of said Sixth judicial district heretofore created by act of the legislature of this territory, shall be respectively tried, heard, and determined in the district court held in the subdivision hereby created, in which the country wherein the cause of action arose, or the offense was committed, or the venue is laid, is situate or forms a part. (*Id.* § 9.)

*§ 8*l*. **Repealing clause.** All acts or parts of acts conflicting with this act, or any of its provisions, are hereby repealed. (*Id.* § 10.)

*§ 8*m*. **Dickey and McIntosh counties.** The counties of Dickey and McIntosh are hereby created and constituted a subdivision of the Sixth judicial district. (*Sess. Laws* 1885, *c.* 82, § 1.)

*§ 8*n*. **Court, where held.** The judge of the Sixth judicial district shall annually appoint and hold court for said subdivision at the county seat of said Dickey county; and the county of McIntosh is hereby attached to Dickey county for judicial purposes. (*Id.* § 2.)

*§ 8*o*. **Terms of district.** The terms of the district court in and for the Sixth judicial district of the territory of Dakota, having and exercising, in all cases arising under the constitution and laws of the United States, the same jurisdiction as is vested in the circuit and district courts of the United States, shall be held at Bismarck, in the county of Burleigh and territory of Dakota, on the first Tuesday of March and the first Tuesday of September in each year; and the judge of said court

shall have power to appoint and hold such other special terms of said district court as he may deem necessary for the due administration of justice. (*Sess. Laws* 1885, *c.* 80, § 1.)

*§ 8*p*. **Actions and proceedings.** All actions, motions, orders, and proceedings, pending at the time of the passage of said act of congress, are hereby declared to continue in said Sixth judicial district in every subdivision therein with full force and effect, the same as though said judge had not so held: *provided*, *however*, that this act shall not be construed as a legislative construction that such decision is correct, but this act is passed to avoid the effect of such decision on pending cases and proceedings, and to avoid litigation and unnecessary appeals. (*Sess. Laws* 1885, *c.* 83, § 1.)

See page 630.

§ 9. **Additional terms of court.** Amended by striking out in said section the word "additional" wherever it occurs therein. (*Sess. Laws* 1885, *c.* 71, § 1.)

See page 338.

CHAPTER XV.

DISTRICT ATTORNEYS.

*§ 10. **Authority of—fees.** If a judicial subdivision is composed of more than one county, the district attorney of the county where the court is held for that judicial subdivision, shall have authority to try all cases in which the county or territory is a party, as provided by law, in the district court, and there shall be charged as a part of the expenses of all criminal prosecutions arising out of said county the following fees: For each trial in cases of misdemeanor ten dollars, and for each trial in cases of felony twenty-five dollars, and for each judgment upon a plea of guilty, or for costs, ten dollars,—which fees shall be paid by the counties attached to said counties where the court is held, for judicial purposes. The above fees for all criminal offenses arising in such counties shall be included in the order of the court or judge as a charge on the said counties, together with the other charges against said counties as provided by law. (*Sess. Laws* 1885, *c.* 45, § 2.)

See page 635.

CHAPTER XIX.

JURORS.

§ 6. **Grand jury, how summoned.** A grand jury shall be summoned in the same manner provided for summoning petit jurors: *provided*, that in all cases the grand jury shall consist of not less than sixteen nor more than twenty-three jurors. (*As amended, Sess. Laws* 1885, *c.* 62, § 1.)

See page 351.

CHAPTER XXI.

COUNTIES AND COUNTY OFFICERS.

ORGANIZATION OF COUNTIES.

§ 1. **Fifty voters to organize county.** (*Repealed, Sess. Laws* 1885, *c.* 40, § 26.)

§ 2. **Petition to governor on appointments.** (*Id.*)

§ 3. **Commissioners qualify and appoint officers.** (*Id.*)

See page 354.

COUNTY COMMISSIONERS.

*§ 15*bb*. **When commissioners to divide county—repeal.** Section five of chapter thirty-three, Statutes of eighteen hundred and eighty-three, page three hundred and sixty, which recites, "This act shall take effect and be in force from and after its passage and approval: *provided*, that the provisions of this act shall not apply to Clay county and Lincoln," amended by striking out all the proviso in said section. (*Sp. Laws* 1885, *c.* 10, § 1.)

*§ 15*bbb*. **Provisions extended.** The provisions of said act are hereby expressly extended and made to apply to the counties of Clay and Lincoln, in this territory. (*Id.* § 2.)

See page 638.

§ 42. **Board provides offices, jail, court-room, etc.** In any county where there is no court-house or jail erected by the county, or where those erected have not sufficient capacity, it shall be the duty of the board of county commissioners to provide for court-room, jail, and offices for the following named officers: Sheriff, treasurer, register of deeds, district attorney, auditor, clerk of the district court, superintendent of public schools, and judge of probate, to be furnished by such county, in a suitable building or buildings, for the lowest rent to be obtained at the county seat; or to secure and occupy suitable rooms at a free rent within the limits of the county seat, or any of the additions thereto, until such county builds a court-house. They shall also provide the courts appointed to be held therein with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of their business. If the commissioners neglect, the court may order the sheriff to do so, and the expense incurred by him in carrying the order into effect, when certified by the court, shall be a county charge. (*As amended, Sess. Laws* 1885, *c.* 41, § 1.)

See page 362.

CHAPTER XXII.

VACANCIES IN OFFICE.

§ 9. **Filling vacancies in county board.** Amended by adding thereto the following: "And in case a majority of the officers before described do not agree as to the appointment of a person to fill said vacancy, the county treasurer shall be called in and shall act as an additional member of said board, to fill said vacancy." (*Sess. Laws* 1885, *c.* 148, § 1.)

See page 377.

CHAPTER XXIII.

CIVIL TOWNSHIPS.

Part I.—Township Organization.

I.—TOWNSHIPS, HOW ORGANIZED AND NAMED.

§ 1. **May attach fragment of congressional township to adjoining town.** Amended by inserting after the word "territory" the following: "And the board of county commissioners of any county lying north of the forty-sixth parallel of latitude, west of the Missouri river, may unite not less than four congressional townships into one civil township; or may add not more than three congressional townships to any congressional township already organized as a civil township, when petitioned by a majority of the legal voters affected thereby, if, in the opinion of the said board of commissioners, the best interests of said townships be subserved thereby." (*Sp. Laws* 1885, *c.* 50, § 1.)

See page 378.

XXIV.—TOWNSHIP DEBTS AND BONDS.

*§ 116*a*. **Petition for issue of bonds.** Whenever a petition shall be presented to the board of supervisors of any of the organized towns in the territory, or that may hereafter be organized, bearing the signatures of two-thirds of the legal voters of such township, (of which fact that such petition bears the signature of said majority of such legal voters the last registered poll-list of such town shall be *prima facie* evidence,) praying for a certain amount of money to be raised—not to exceed five per centum of the taxable valuation of said town, as shown by the last assessment roll, nor in any case more than five thousand dollars—for the construction of any public road or roads, ditch or ditches, embankments, levees, or any similar work over any lands within said township, the said supervisors shall issue and sell the bonds, with coupons attached, of such township, for and in the amount specified in such petition; said bonds to run not longer than twenty years, and to draw a rate of interest not exceeding ten per centum per annum, payable annually. Said bonds shall not be sold or disposed of for less than their par value. Said town shall provide for the payment of the said bonds, and the interest thereon, by sufficient taxation to meet the same. (*Sess. Laws* 1885, *c.* 144, § 1.)

*§ 116*b*. **Disposition of funds arising from sale of bonds.** The money obtained from the sale of said bonds shall be used, under the direction of the supervisors of said town, in the construction of the work for which the bonds were issued, and in the purchase of such tools and machinery as shall have been prayed for in said petition, and any other that the supervisors may deem advisable, for the prosecution of said work. (*Id.* § 2.)

*§ 116*c*. **Bonds, how executed.** The bonds herein provided for shall be signed by the chairman of the board of supervisors of such town, and be countersigned by [the] town clerk, who shall file and record the petition upon which the said bonds were issued, and shall keep a record showing the action of the board of supervisors in the premises, and also a record showing the amount, date of issue, to whom issued, rate of interest, and date of maturity of said bonds. (*Id.* § 3.)

*§ 116*d*. **Moneys derived from proceeds — custody of.** All money divided [derived] from the proceeds of such bonds shall be paid in to the town treasurer of such term, [town,] who shall pay the same out, on the order of the chairman of the board of supervisors, countersigned by the town clerk. (*Id.* § 4.)

See page 400.

Part II.—Roads, Cartways, and Bridges.

IV.—HIGHWAY LABOR AND ROAD TAX.

§ 12. **Who liable to labor.** The word "sixty," referring to the age of persons, changed to "fifty." (*Sess. Laws* 1885, *c*. 128, § 1.)

See page 403.

§ 21. **Labor—substitute.** The word "ten," referring to hours of a day's labor, changed to "eight." (*Id.* § 2.)

See page 405.

X.—JUDICIAL DISTRICT ROADS.

§§ 64–68. **Repeal.** Sections sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight of chapter two of chapter one hundred and twelve of the Session Laws of eighteen hundred and eighty-three are hereby repealed. (*Sess. Laws* 1885, *c*. 143, § 1.)

See pages 415, 416.

RIGHT OF WAY GRANTED TO PRIVATE CORPORATIONS.

*§ 101. **Right of way granted to telegraph and telephone companies.** There is hereby granted to the owners of any telegraph line, or telephone line or exchange, owned and operated in this territory, the right and power to use the public grounds, streets, alleys, roads, and highways in this territory, on the line of their route, for the purpose of erecting posts or poles on or along the same to suspend the wires or fixtures: *provided*, that the same shall be so located as in no way to interfere with the safety or convenience of ordinary travel on or over the said roads or highways. (*Sess. Laws* 1881, *c*. 132, § 3, *as amended by Sess. Laws* 1883, *c*. 110, § 1.)

*§ 101*a*. **Repeal.** Chapter one hundred and ten of the Session Laws of eighteen hundred and eighty-three, entitled "An act to amend chapter one hundred and thirty-two of the general laws passed at the fourteenth session of the legislative assembly," is repealed. (*Sess. Laws* 1885, *c*. 141, § 4.)

*§ 101*b*. **Right of way to telegraph and telephone lines.** There is hereby granted to the owners of any telegraph or telephone lines operated in this territory, the right of way over lands and real property in this territory, and the right to use public grounds, streets, alleys, and highways in this territory, subject to control of the proper municipal authorities as to what grounds, streets, alleys, or highways said lines shall run over or across, and the place the poles to support the wires are located. The right of way over real property granted in this act may be acquired in the same manner and by like proceedings as provided for railroad corporations. (*Id.* § 3.)

See page 425.

CHAPTER XXVII.

ELECTIONS.

§ 3. **Judges of election to be appointed.** The several boards of county commissioners shall, respectively, at least thirty days prior to the general election in each year, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of election at each precinct for the poll of elections therein, as provided for in this act; and in case of the failure of the said board, from any cause, to make such appointment as herein provided, then the county clerk shall make such appointment within thirty days thereafter; and said board shall set off and establish election precincts in so much of the county as is not included in organized civil townships therein, and such precincts shall be set off and established in such manner as that no one precinct shall be within more than one commissioner's district, and that there shall be at least one voting precinct in each commissioner's district; and the county clerks of the several counties shall make out and deliver to the sheriff, coroner, or other person that may be designated by the board of county commissioners of each county immediately after the appointment of said judges of election, a notice in writing thereof, directed to the judges of election so appointed; and it shall be the duty of such sheriff, coroner, or other person appointed, as provided in this section, within ten days after receiving such notice, to serve the same upon each of the said judges of election: *provided*, that every organized civil township shall constitute an election precinct, and the township supervisors thereof shall be the judges of election for all elections, whether general or special, held for any purpose whatsoever in the county. (*As amended*, *Sess. Laws* 1885, *c.* 53, § 1.)

See page 445.

§ 47. **Who entitled to vote.** Amended by striking out from said section the following words: "Twenty days in the county and five days in the precinct," and inserting in lien thereof as follows: "Sixty days in the county and twenty days in the precinct." (*Sess. Laws* 1885, *c.* 52, § 1.)

See page 455.

CHAPTER XXVIII.

REVENUE.

LISTING.

§ 17. **Property listed, assessed, and taxed.** All personal property is to be listed, assessed, and taxed in the county where said property may be situated, and kept on the first day of April of the then current year, and if the owner, his agent, or person having charge of such property, neglects to list it, he will be subject to the penalty hereinafter provided. (*As amended, Sess. Laws* 1885, *c.* 129, § 1.)

*§ 17*a*. **Property in unorganized county.** When any personal property is situated and kept in any unorganized county of this territory, then such property shall be subject to taxation in the nearest organized county thereto, and shall be listed and assessed by the assessor of said nearest organized county; and when said unorganized county borders upon two or more organized counties, then said property shall be assessed and taxed in that organized county having the greatest extent of continguous boundary line. (*Id.* § 2.)

*§ 17*b*. **Collusion in assessment a misdemeanor.** If any assessor or county commissioner shall enter into any contract, agreement, or understanding with the owner or his agent of any personal property, whereby and pursuant to which such property is to be assessed at less than its cash value, in consideration that the owner or owners of such property shall remove, or cause to be removed, said property for the purpose of taxation into the county of said assessor or commissioner, such assessor or commissioner, and the owner of such property, and all persons aiding or abetting such corrupt transaction and agreement, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars, and by imprisonment in the county jail for not less than three months nor more than six months. (*Id.* § 3.)

See page 463.

§ 3, subds. *21, *22. **Telegraph companies—repeal.** Chapter one hundred and thirty-two of the Session Laws of eighteen hundred and eighty-one, entitled "An act to provide for the payment of taxes of telegraph companies, and granting the right and power to use highways and roads to telegraph companies," is hereby repealed. (*Sess. Laws* 1885, *c.* 141, § 5.)

See page 646.

TAX COMMISSION.

*§ 32*a*. **Repealed.** (*Sess. Laws* 1885, *c.* 141.)

*§ 32*b*. **Limit of territorial tax.** The territorial board of equalization is hereby prohibited from levying a tax to exceed three mills on the dollar of the assessed valuation in any one year. *Sess. Laws* 1885, *c.* 9, § 12.)

See page 648.

DELINQUENCY, PENALTY, AND LIEN FOR TAXES.

*§ 54*a*. **Taxes, when delinquent.** The date on which taxes of all kinds, levied for the year eighteen hundred and eighty-four, shall become delinquent and a penalty attached for non-payment, is hereby extended to June first, eighteen hundred and eighty-five, at the end of which time the same proceedings shall be had as would regularly be taken under the present law. (*Sess. Laws* 1885, *c.* 132, § 1.)

*§ 54*b*. **Applies to private corporations.** This act shall not apply to taxes due from railroad and telegraph companies. (*Id.* § 2.)

See page 476.

SALES WRONGFULLY MADE.

§ 78. **Erroneous sales corrected.** Amended by striking out after the word "interest," in the fourth line of said section, the words "to which he would have been entitled had the land been rightfully sold," and insert in lieu thereof the words "at the rate of twelve per cent. per annum from the date of sale." (*Sess. Laws* 1885, *c.* 130, § 1.)

See page 483.

SUITS FOR RECOVERY OF DELINQUENT TAXES.

*§ 106. **Action by county treasurer.** At any time after the annual tax sale has closed, if any real property remains unsold for want of bidders thereof, or any taxes remain unpaid, the county treasurer is hereby authorized and empowered, when so directed by the board of county commissioners, in lieu of the private sale provided by section sixty-nine of chapter twenty-eight of the Political Code, to institute a civil action in the district court of his county or subdivision, in his own name, as treasurer of his county, for the collection of such taxes from the party or parties liable therefor, against the real property chargeable therewith. In such action the treasurer shall include taxes remaining unpaid and delinquent for any previous year or years, and all delinquent taxes for whatever year, against whomsoever assessed, that are a lien upon the real property sought to be charged in the action, and that can properly be united in the same action. (*Sp. Laws* 1885, *c.* 25, § 1.)

*§ 107. **Action, against whom brought.** Where the real property appears assessed against any owner, or the title of a subsequent owner of such property appears of record, the treasurer may bring the action against either or both, at his option; and in cases where the property appears assessed to an unknown owner, and the title of no subsequent owner appears of record, he may bring the action against an unknown owner, and all persons having an interest in the property shall be presumed to have notice of such action and the proceedings therein. (*Id.* § 2.)

*§ 108. **Action, how commenced.** This action shall be begun by the service of a summons in like manner as in other civil actions; and in the case of non-residents and of unknown defendants, service of the summons shall be made by publication, upon the same proceedings and

in like manner as are provided in the Code of Civil Procedure for nonresident and unknown defendants having or claiming an interest in or lien upon real property. (*Id.* § 3.)

*§ 109. **Judgment—costs included in.** In every judgment recovered under this act, the same costs shall be taxable as in ordinary civil actions, and in addition thereto the sum of one dollar in each case, for the treasurer, for his certificate of the tax entry; and it shall be the duty of the county attorney to prosecute all such suits, when directed so to do by the board of county commissioners, without any additional fees therefor: *provided*, *however*, that none of these taxable costs shall be demanded of the treasurer of the county in advance, but shall be payable when collected by the treasurer. (*Id.* § 4.)

*§ 110. **Complaint in action—form of.** In the action brought by the treasurer, the complaint may be in the following form, and shall be legally sufficient:

————. [Title of court.]

————, plaintiff, v. ————, defendant.

The plaintiff complains and alleges that the defendant is indebted to the plaintiff in the sum of $——— [naming the total amount due the territorial, county, and other funds] for taxes, with five per cent. penalty added thereto for the non payment thereof, and interest thereon at the rate of one per cent. per month, from ——, —, [date of delinquency,] and —— cents, costs of advertising, which said taxes were duly assessed and levied upon the [real or personal] property of the defendant, to-wit, [describe the property as assessed,] for the fiscal year, [naming the year.] (For taxes for a previous year, an additional paragraph may be added, in similar form.) That the taxes aforesaid, with penalty, interest, and costs, are a lien upon the real property before described. Wherefore, plaintiff prays judgment against said defendant for the sum of $——, with penalty and interest as aforesaid, and costs of suit, and that the lien of said taxes may be enforced against said real property, and the same be condemned to be sold to satisfy plaintiff's judgment.

[Signature of attorney.]

In case of an unknown owner, or of personal tax chargeable as a lien on real property, or where the defendant is sued in a representative capacity, or in other causes presenting peculiar circumstances, the complaint shall contain such additional allegations as such circumstances may require. (*Id.* § 5.)

*§ 111. **Evidence on trial.** In the trial of any action brought under this act, a certificate in the following form, signed by the treasurer and under the seal of the county, shall be *prima facie* evidence of the due assessment and levy of the tax, and that it is due and delinquent:

"I hereby certify that the following is a correct transcript of an entry on the duplicate tax list of ——— county, now in my hands for collection: [Name, description of real property, personalty, tax to different funds, totals, remarks;] that the above tax became delinquent on ———.

[date;] has since been advertised for sale at a cost of $———, and not sold, for want of bidders, and remains unpaid.

[County Seal.] "————————, Treasurer."

(*Id.* § 6.)

*§ 112. **Practice and procedure in action.** These actions shall be governed by the rules and practice of the Code of Civil Procedure, and judgment may be taken as in such Code provided, either in term time or vacation. Where issue is joined, the cause shall at once, on request of the plaintiff, be placed by the clerk on the calendar for trial, without serving or filing note of issue or notice of trial, and shall be given precedence in the district court next after criminal business. Such issue shall be triable by the court, subject to its power to send any or all of the issues to be tried to a jury, as provided in the Code of Civil Procedure. (*Id.* § 7.)

*§ 113. **Treasurer to pay costs and distribute balance.** Upon the payment of any taxes after suit shall have been brought, or the payment or collection thereof after judgment, the treasurer shall pay therefrom the costs, and make distribution of the balance as provided by law. (*Id.* § 8.)

*§ 114. **Judgments to bear interest.** All judgments obtained under the provisions of this act shall bear interest at the rate of thirty [per cent.] per annum until paid. (*Id.* § 9.)

*§ 115. **Execution—enforcement of judgment.** Upon the recovery of judgment in any case brought under this act, the same may be enforced by execution in like manner as now provided in the Code of Civil Procedure for cases of judgment requiring the sale of property, and the proceedings throughout shall be the same as in such cases, except that in all cases arising under this act execution shall be directed to the treasurer of the county in which the property to be sold is situated, instead of to the sheriff, and the treasurer shall discharge, all and singular, the duties in and about the receipt of said execution, the advertisement, and sale of the real property directed to be sold thereunder, the conduct of the sale, the execution of certificate of purchase, return of execution, and report of sale, and any other duties now required of the sheriff in the sale of real property on execution, in the same manner as the same are required by law to be performed and discharged by the sheriff in the case of sale of real property by him under writs of execution requiring the sale of real property; the proceedings of the treasurer in the premises to be reported to the court upon return of the execution, and be subject to review and confirmation by the court, in like manner as sheriff's sale of real property on execution. The premises sold by the treasurer shall be subject to redemption in like manner, upon the same terms and conditions, and within the same period, as provided for ordinary sales of real property on execution: *provided, however*, that during the period allowed for redemption, and until redemption is made, the treasurer's certificate of purchase shall bear interest at the rate of thirty per cent. per annum. (*Id.* § 10.)

*§ 116. **Sale under execution.** In any sale upon execution under this act, the person who offers to pay the amount due on any parcel of land, for the smallest portion of the same, is to be considered the highest bidder; such portion to be chosen in like manner as provided for sales made by the treasurer under ordinary tax sales in section sixty-three of chapter twenty-eight of the Political Code. (*Id.* § 11.)

*§ 117. **Treasurer, when to bid in for county.** If, in any instance, there should be no bidders willing to give the full amount of the judgment, penalty, interest, and costs for any real property advertised and offered for sale, then it shall be the duty of the treasurer, when directed by the board of county commissioners, to bid for such real property in the name of the county of which he is treasurer, for the amount of judgment, interest, and costs accrued, and certificate shall issue to such county in like manner as to any other purchaser: *provided, however*, that no costs or treasurer's commission shall be payable by the county until redemption is made from such sale, or the time for redemption has expired: *provided, further*, that all property purchased by any county, under the provisions of this act, shall be offered for sale to the highest bidder, by the treasurer, at each annual tax sale, until the same is sold. (*Id.* § 12.)

*§ 118. **Deed, when to be made.** At the expiration of the period allowed for redemption, if no redemption shall have been made, the treasurer must make the purchaser, or the party entitled thereto, a deed of the real property sold, which deed shall be in the usual form of deeds made by the sheriff after sale under execution on a judgment directing the sale of real property, and shall have the same force and effect. (*Id.* § 13.)

*§ 119. **Fees allowed to treasurer.** For his services in attending and conducting any sale under this act, the treasurer shall be allowed the following fees:

For advertising and attending sale and returning execution, one dollar.

For executing certificate of purchase, one dollar.

For execution of deed, one dollar; the last item to be paid by the grantee in the deed, the other items to be taxed as accrued costs in making sale. (*Id.* § 14.)

*§ 120. **Rights of purchaser at sale.** The purchaser at any sale as aforesaid, or his assignee, may pay any tax becoming delinquent before redemption from his purchase has been made, and thereafter no redemption can be made from him without paying the amount due on his certificate of purchase, with interest at the rate of thirty per cent. per annum from the date thereof, and such other liens held by him as are now required to be paid in making redemption from sales on ordinary execution; and, in addition thereto, the amount of such subsequent tax paid by him, with interest from date of his payment thereof, at the rate of thirty per cent. per annum. (*Id.* § 15.)

*§ 121. **Limitation of actions impeaching sale.** The same limitation shall apply to the bringing of action to impeach any deed

made under the provisions of this act, and the same prerequisites be enforced against the party bringing such action as in case of deed executed by the treasurer, on ordinary tax sale, made by him, in section seventy-five of chapter twenty-eight of the Political Code. (*Id.* § 16.)

*§ 122. **Defenses in action against enforcement of tax.** In actions brought under the provisions of this act, it shall be no defense thereto that the land described has not been advertised or offered at the tax sale, or that a public tax sale for any year has not been held, or that there were irregularities in the conduct of the sale or the advertisement thereof, or in the assessment and levy of the tax; nor shall any defense be admissible, or any relief granted against the tax sought to be enforced, except such as may have been heretofore permitted under the existing revenue laws of the territory. (*Id.* § 17.)

*§ 123. **Remission of penalties and interest.** It is further provided that any parties paying their delinquent taxes prior to October first, eighteen hundred and eighty-five, for the year eighteen hundred and eighty-three, and all previous years, shall have remitted to them all penalties and interest due on the same. (*Id.* § 18.)

*§ 124. **Effect of act.** This act shall be in force and effect from and after its passage and approval, but no proceedings for the sale of property under the provisions thereof shall take place prior to November first, eighteen hundred and eighty-five. (*Id.* § 19.)

*§ 125. **Amendment.** The provisions of section eighteen of an act entitled "An act supplementary to chapter twenty-eight of the Political Code, entitled 'Revenue,' and to authorize the bringing of suits for the recovery of delinquent taxes, and to regulate proceedings [proceedings] therein," approved March third, eighteen hundred and eighty-five, shall apply only to, and be in force in, the counties of Lawrence, Pennington, Custer, Fall River, and Butte. (*Sp. Laws* 1885, *c.* 26, § 1.)

COUNTY TREASURER MAY BID AT SALE.

*§ 126. **Authority of county treasurer.** The county treasurer of each county within this territory is hereby authorized at all tax sales hereafter made under the laws of this territory, in case there are no other bidders offering the amount due, to bid off all or any real estate offered at said sale, for the amount of taxes, penalty, interests, and costs due and unpaid thereon, in the name of the county in which the sale takes place; said county acquiring all the rights, both legal and equitable, that any other purchaser could acquire by reason of said purchase. (*Sess. Laws* 1885, *c.* 131, § 1.)

*§ 127. **Right of owner to redeem.** In case the owner of said real estate, or any person having any legal or equitable interest therein, is desirous of redeeming said real estate from said county, they shall have the right so to do, any time within two years from the date of sale, by paying the amount of taxes, penalty, interest, and costs of sale up to date of redemption, and upon the payment thereof the said county

treasurer is hereby required to give to the person so redeeming a certificate of redemption, and to mark upon the tax duplicate that is kept in his office, opposite the description of said real estate where said description is entered upon said duplicate, the word "redeemed," and the date when the same was done. (*Id.* § 2.)

*§ 128. **Right to redeem after sale to county treasurer.** If any person is desirous of purchasing the interest of said county in said real estate, acquired by reason of said county treasurer bidding the same off in the name of and for said county, he may do so by paying the said county treasurer the amount of the taxes, penalty, interest, and costs of sale and transfer up to the date he so pays, and thereupon the said treasurer shall, and it is hereby made his duty to, assign and deliver to said purchaser the certificate of purchase held by said county for said real estate, which assignment and transfer shall convey unto said purchaser all rights of said county, both legal and equitable, in and to said real estate, as much so as if he had been the original purchaser at said tax sale. (*Id.* § 3.)

*§ 129. **Certificate of sale.** Whenever the county treasurer of any county shall bid off any real estate in the name of his county, he shall make out a certificate of purchase to said county, just as he is required to do if the sale had been made to any other person; but he shall retain the same in his office until transferred as provided in section three of this act. (*Id.* § 4.)

*§ 130. **Amounts due territory.** No amount due the territory or any other fund, costs, or treasurer's commission, shall be payable by the county until redemption is made from such sale, or the time for redemption has expired, or until the interests of said county have been transferred or assigned as provided in section three of this act. (*Id.* § 5.)

See page 489.

CHAPTER XXX.

MILITIA.

§ 14. **Military commissions.** Amended by striking out the words "except the quartermaster general, adjutant general, and paymaster general." (*Sess. Laws* 1885, *c.* 114, § 1.)

See page 508.

*§ 24. **Uniforms to be procured.** Chapter 30 of the Political Code amended as follows: "That every company or battery of the Dakota national guard shall provide suitable uniforms, subject to the inspection and approval of the officer who may muster such company into service. For the purpose of aiding in procuring uniforms and keeping them in repair, there shall be paid annually to each officer and soldier, who shall be uniformed and duly mustered, and is in attendance at the

annual encampment, or the annual inspection of such company, a sum equal to five dollars. (*Sess. Laws* 1885, *c.* 113, § 1.)

*§ 25. **Armory to be provided.** Every company and battery shall provide, at their own expense, a suitable room or building for an armory, with proper racks, frames, and other needful provision for the safe-keeping of the arms, accouterments, and stores issued by the territory, and shall therein keep the same when not in lawful use. The governor of the territory is hereby authorized and empowered to receive and execute bonds in the name of the territory for such arms and accouterments as may be deemed necessary to fully carry out the provisions of this act. (*Id.* § 2.)

*§ 26. **Allowance for current expenses.** Each company or battery which shall be organized and mustered, and shall possess minimum number of members, and are uniformed and equipped with the necessary arms and accouterments for its members; that has a suitable armory, and has its arms, accouterments, and stores in good condition, which shall have been annually mustered and inspected by the company commander, and made return thereof to the adjutant general, shall, upon the certificate thereof from the adjutant general, approved by the governor, be annually paid out of the territorial treasury three hundred dollars, on the receipts of the commander, which shall be in full compensation on the part of the territory for all pay, when not called into active service, and for rent of armory. Whenever any of the companies shall lapse into ill condition,—become lax in discipline, negligent in instruction, drill, or other duties, or the members lose interest in their organization,—the governor may retire such company from the service, and shall admit in place thereof some other company of later organization, which shall have complied with the requirements of the law: *Provided, however*, that compensation shall not be allowed to more than one company in any county. The governor, however, may divide the compensation between two companies, where the same have already been organized. (*Id.* § 3.)

*§ 27. **Exemption from jury duty and poll-tax.** Every member of the Dakota national guard shall be exempt from jury duty, and from the payment of poll-tax; and every member who shall be honorably discharged after four years' service, or by reason of disability received while in service, shall be forever so exempt, and also exempt from military duty in time of peace. The proper discharge certificate shall be conclusive evidence of the right of such exemption. (*Id.* § 4.)

*§ 28. **Formation of battalions and regiments.** The governor may form the volunteer companies into battalions and regiments, and appoint officers therefor, not less than two nor more than five companies to constitute a battalion, and two battalions shall be deemed a regiment. The officers of such regiment shall be a colonel, lieutenant colonel, and one major. (*Id.* § 5.)

*§ 29. **Instruction and drill duties.** The governor shall, with or without permanently organizing battalions or regiments, order ren-

dezvous and encampments of the several companies for instruction in drill and duties, not to exceed four nor less than two days in any one year, and shall fix the point at which such companies shall rendezvous, and the governor shall designate the officer to command at each camp. The governor shall allow, towards the expense of subsistence of the troops during such rendezvous, one dollar and fifty cents per day for each officer and enlisted man actually attending in uniform, for the time he is absent from home to attend such rendezvous. Such allowance shall be paid out of the territorial treasury to the companies, on such vouchers and proofs as the governor may require, and on his approval. Transportation, subsistence, and suitable camp and garrison equipage shall be provided at the expense of the territory. (*Id.* § 6.)

*§ 30. **Blanks and forms to be provided.** The adjutant general and quartermaster general shall prepare, subject to the governor's approval, blanks and forms for muster-rolls, ordnance and property returns, reports, receipts, and other papers necessary to carry out the provisions of this act, with proper accompanying instructions, from time to time. The adjutant general shall preserve and cause to be recopied, when necessary, such muster-rolls or other records of his office as require to be transcribed for preservation. That the adjutant general shall receive the sum of one thousand dollars per annum as salary, and there is hereby appropriated the sum of five hundred dollars for the purchase of necessary records, keeping the same, traveling expenses, rents, caring for and storing arms, freights, and other necessary expenses belonging to the adjutant general's office. (*Id.* § 7.)

*§ 31. **Inspections annually.** The entire territorial militia, and all armories, ordnance stores, camp and garrison equipage belonging to the territory, shall be inspected at least once each year, under such rules and regulations as may be provided by the inspector general, with the approval of the commander in chief. (*Id.* § 8.)

*§ 32. **Compensation for clerical services.** Such clerical assistance shall be employed in the adjutant general's office as shall, in the opinion of the governor, be actually necessary, and any person so employed shall receive, for the time actually and necessarily on duty, such compensation as the governor may prescribe. There shall be allowed annually for postage, stationery, and office incidentals, to each regimental headquarters, twenty-five dollars, and each company headquarters the sum of ten dollars. (*Id.* § 9.)

*§ 33. **Execution of process, enforcement of.** When the sheriff or other officer authorized to execute process, finds, or has reason to apprehend, that resistance will be made to the execution thereof, he may command as many male inhabitants of his county as he may think proper, and upon application of the sheriff, and by order of the governor, any military companies in the county, armed and equipped, shall assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, and the aiders and abettors, to be punished by the law. (*Id.* § 10.)

*§ 34. **Preservation of the peace.** All officers and soldiers, while on duty or assembled therefor, pursuant to the order of any sheriff of any county, in cases of riot, tumult, breach of the peace, or whenever called upon by the civil authorities to aid in the enforcement of the laws, shall receive the same compensation as provided for in section twelve of this act, and shall be a portion of the county charges of said county from the territory, to be levied and raised as other county charges are levied and raised. (*Id.* § 11.)

*§ 35. **Compensation in time of insurrection, etc.** The military forces of the territory, when in the actual service of the territory in time of insurrection, invasion, or immediate danger thereof, shall, during their time of service, be paid, by an appropriation especially made therefor, the following sums each for every day actually on duty: To each general, field, and staff officer, four dollars; to every other commissioned officer, two dollars and fifty cents; to every non-commissioned staff officer, two dollars; to every other enlisted man, one dollar and fifty cents. (*Id.* § 12.)

*§ 36. **Publication of rules and regulations.** The governor shall, from time to time make, publish, and distribute, in a neat pamphlet form, rules, regulations, and orders for the government of the Dakota national guard, not inconsistent with law. (*Id.* § 13.)

*§ 37. **Annual appropriation.** For the purpose of carrying out the provisions of chapter thirty of the Political Code of the territory of Dakota, as herein amended, there is hereby made an appropriation of fifteen thousand dollars per annum, or so much thereof as may be necessary, out of any money in the territorial treasury, and all warrants against said appropriation shall be drawn by the territorial auditor upon the territorial treasurer, upon the certificate of the adjutant general, approved by the governor. All laws in conflict with the foregoing provisions being hereby so amended as to conform thereto. (*Id.* § 14.)

See page 510.

NOTE. Special Act—An act to provide for the payment of the expenses of sending militia to Spink county. Approved February 27, 1885.

CHAPTER XXXI.

MINES AND MINING.

SCHOOL OF MINES.

*§ 21. **Establishment at Rapid City.** A school of mines for the territory of Dakota shall be established at Rapid City, in Pennington county, Dakota territory. It shall be the object of such school of mines to furnish facilities for the education of such persons as may desire to receive special instruction in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the fun-

damental laws of the United States, and the rights and duties of citizens: *provided*, that a tract of land of not less than five acres, within the corporate limits of said Rapid City, or immediately adjacent to said corporate limits, be donated and secured to the territory of Dakota, in fee-simple, as a site for said school of mines, within six months from the taking effect of this act, and the governor of the territory is hereby authorized, and it is made his duty, to see that a good and sufficient deed be made to the territory for the same. (*Sess. Laws* 1885, *c.* 133, § 1.)

*§ 22. **Board of trustees.** The governor of the territory, with the advice and consent of the council, shall appoint a board of trustees of said school of mines, to be composed of five persons, who shall, except as hereinafter provided, hold their office for a period of two years, and until their successors are appointed and qualified. Any three of said board of trustees shall constitute a quorum for the transaction of business, and the said board shall have such powers and perform such duties as are hereinafter specified. (*Id.* § 2.)

*§ 23. **Oath of trustee.** Every trustee appointed shall, before he enters upon the duties of his office, take and subscribe an oath to support the constitution of the United States and the organic act of Dakota territory, and to perform faithfully the duties of his office, to the best of his ability and understanding. (*Id.* § 3.)

*§ 24. **Control and management.** Said board of trustees shall have the control and management of said school of mines, and of the property belonging thereto, subject to the laws of this territory, and may provide all needful rules, regulations, and by-laws for the government of said board, and for the government and management of said school of mines, not inconsistent with the laws of this territory. (*Id.* § 4.)

*§ 25. **Erection of building.** The board of trustees is hereby authorized, and it is made its duty, to begin at once the erection and construction of a suitable building for said school of mines, upon the ground specified in this act as a site for the same, as soon as sufficient appropriation is secured for the erection thereof, and also to procure such machinery and other appliances as may be necessary to carry out the object and intention of said institution, and to promote the welfare thereof, whenever the funds provided for the support of said school of mines shall warrant the same: *provided*, that all contracts connected with the erection and construction of said building shall be let to the lowest responsible bidder, after notice of the letting of said contract shall have been published in at least two newspapers located in the western part of the territory, for at least thirty days before the letting of said contract, and the board may reject any or all bids and advertise anew. (*Id.* § 5.)

*§ 26. **Admission of students.** The school of mines shall be a place for instruction without charge to all *bona fide* residents of this territory, without regard to sex or color; and, with the consent of said board, students from other states or territories may be admitted thereto, upon such terms and upon such rates for tuition as the board may prescribe. (*Id.* § 6.)

*§ 27. **Officers of board of trustees—meetings.** The said board, at their first meeting, and biennially thereafter, shall elect one of their number president of such board, and shall also appoint a secretary and treasurer, either from their own number or other suitable persons, as they may deem best, and prescribe their duties, and may, in their discretion, remove such secretary and treasurer. And the trustees hereby appointed shall hold their first meeting as soon as practicable after this act shall take effect. All meetings of said board shall be held at Rapid City, in the county of Pennington, in this territory. (*Id.* § 7.)

*§ 28. **Vacancies, how filled.** The governor of this territory, with the advice and consent of the council, shall, at each regular session of the legislative assembly of Dakota territory, appoint suitable persons to fill all vacancies in said board of trustees, either by expiration of their term of office or otherwise. And any vacancies occurring in said board when [the] legislative assembly is not in session, may be temporarily filled by the governor, until the next meeting of the legislative assembly. (*Id.* § 8.)

*§ 29. **President of school.** The board of trustees shall elect the president of the school of mines, who shall biennially, on or before the thirtieth day of December in each year, make a report to the governor of this territory of the prosperity and condition of said school of mines, containing such statistical and other information pertaining thereto as may be deemed necessary and useful, and also a detailed statement of the receipts and disbursements of such institution. (*Id.* § 9.)

*§ 30. **Plans and specifications for buildings.** Whenever any building is to be erected, the board of trustees shall have authority to procure all necessary plans and specifications for such building, and it shall be their duty to advertise for proposals for the erection and completion of said building in such manner as they shall deem most advantageous, and shall let the contract for the erection of said building to the lowest responsible bidder; such contractor, in every case, to give adequate security for the faithful performance of his contract. And the said board of trustees shall have authority to appoint a building superintendent, whose duty it shall be to superintend the construction of said building in compliance with the terms of the contract, and to perform such other duties as shall be prescribed by the said board of trustees; and such building superintendent shall receive such compensation for his services as the board of trustees shall determine, and such compensation shall be paid out of the building fund. (*Id.* § 10.)

*§ 31. **Bond of treasurer.** The said board of trustees shall require the treasurer of the school of mines to give such bonds as may be deemed sufficient to protect such institution against loss of any funds which may come into his hands as such treasurer, conditioned for the safe-keeping and faithful disbursement thereof, and the said treasurer of the school of mines shall not pay out any of the funds which shall come into his hands as such treasurer, except upon the order of the president of the school of mines, countersigned by the secretary thereof. (*Id.* § 11.)

*§ 32. **Duty of dean of school.** It shall be lawful for the dean of the said school of mines, who shall be appointed by the board of trustees, to charge and collect such reasonable fees for any and all assays, analyses, or mill-tests, made at the school of mines, as the said board may prescribe, an account of which shall be kept by said dean, and paid over monthly to the treasurer of said school of mines, which shall become a part of the school of mines fund. (*Id.* § 12.)

*§ 33. **Funds.** The school of mines fund shall be used solely for the support of the school of mines, and for no other purpose whatever. (*Id.* § 13.)

*§ 34. **Dean and instructors—appointment of.** Said board of trustees shall have power to appoint a dean, and such other instructors and officers, as may be required, and fix the salaries of each, and prescribe their several duties. They shall also have the power to remove said dean, and any or all of said instructors or officers, and appoint others in their stead. They shall prescribe the books of instruction to be used in said school of mines, and make all needful rules, regulations, and by-laws necessary for the good government and management of the same. (*Id.* § 14.)

*§ 35. **Notice of opening of school.** As soon as said school of mines is prepared to receive pupils for instruction, the president of the board of trustees shall give notice of the fact to each county clerk in the territory, and shall also publish said notice in at least one newspaper in each judicial district in said territory. (*Id.* § 15.)

*§ 36. **Compensation of trustees.** For performing the duties prescribed by this act, each member of the said board of trustees shall be entitled to three dollars per day for the days actually and necessarily employed, and five cents for each mile necessarily traveled in attending meetings of said board. (*Id.* § 16.)

*§ 37. **Meetings of board.** The board of trustees shall hold two regular meetings in each year, on the first Tuesday of June and December, and special meetings of the board may be called upon the written order of the president, which order shall specify the object of the meeting. All financial matters, claims, and accounts shall be disposed of at such board meetings. A true and faithful journal of all their proceedings shall be kept, subject at any reasonable time to the inspection of any member of the board. (*Id.* § 17.)

*§ 38. **Funds—how provided.** For the purpose of providing funds to pay the cost of construction and erection of a main building of the school of mines at Rapid City, Dakota territory, the territorial treasurer is hereby authorized and empowered, and it is hereby made his duty, to prepare for issue ten thousand dollars of territorial bonds, running for a term or period of twenty years, and payable at the option of the territory after a term of ten years, and bearing interest at the rate of six per cent. per annum, with coupons attached, made payable semi-annually on the first day of July and January of each year, at the Chemical National Bank in the city of New York. Such bonds shall be

executed under the seal of the territory, by the governor and treasurer, and shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Id.* § 18.)

*§ 39. **Sale of bonds.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, and upon request of the board of trustees he shall give public notice, for thirty days, in two newspapers of general circulation, one of which shall be published in the city of New York, and said bonds shall be sold to the highest bidder for cash at not less than par. (*Id.* § 19.)

*§ 40. **Tax for payment of.** For the purpose of prompt payment of principal and interest of the bonds herein provided for, there shall be levied by the territorial board of equalization, at the time the other taxes are levied, and collected in the same manner that other territorial taxes are collected, such sums as shall be sufficient to pay such interest and exchange thereon; and after ten years from the first day of May, eighteen hundred and eighty-five, in addition thereto a sinking-fund tax shall be annually levied, sufficient to pay and retire said bonds at their maturity; and it shall be the duty of the territorial treasurer to pay promptly on the first day of July and January of each year, such interest as shall then be due, and to purchase said bonds at their market value, and retire and cancel the same with the sinking-fund tax as fast as the same shall be received. And no tax or fund provided for the payment of said bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 20.)

*§ 41. **Payment of interest.** If for any reason the territorial treasurer shall not have in his hands sufficient funds herein provided to pay the interest upon such bonds when due, he shall pay such interest out of any unappropriated funds belonging to the territory; and there is hereby appropriated and set apart out of the general funds of the territory a sum sufficient to pay such interest on said bonds as may become due before the funds and taxes herein provided for can be made available, and it shall be made the duty of said treasurer to pay such interest promptly at the time it falls due out of said funds. (*Id.* § 21.)

*§ 42. **Special tax.** All moneys belonging to the territorial general fund, applied by said treasurer in payment of the interest on such bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 22.)

*§ 43. **Appropriation.** There is hereby appropriated out of the territorial treasury all the funds realized by the sale of the bonds provided by this act; and the board of trustees shall, within ninety days after the passage of this act, proceed to secure and adopt plans, and begin the erection and construction of said building, with all the powers in the premises conferred by this act upon said board of trustees or any of its officers. (*Id.* § 23.)

*§ 44. **Duty of auditor.** It shall be the duty of the auditor of the territory, upon the application of the board of trustees of the school of mines, or a majority thereof, to draw warrants upon the territorial treasurer for the purpose of constructing said building, and for the pur-

pose of carrying out the provisions of this act: *provided, however*, that a good and sufficient deed in fee-simple, free to the territory, shall first be made for the tract of land hereinbefore specified. (*Id.* § 24.)

*§ 45. **Payment on division of territory.** In case of a division of the territory of Dakota, that part of said territory in which said school of mines is located, after such division, shall assume and pay all bonds and coupons existing at that time by reason of the erection of the building herein provided for. (*Id.* § 25.)

See page 514.

CHAPTER XXXIV.

DOMESTIC ANIMALS.

*§ 52. **Owners of dog liable for damages.** Any person keeping, owning, or harboring a dog that shall chase, worry, or kill sheep, shall be liable for all damages committed by such dog upon any sheep, to the owner of such sheep, and shall not be entitled to any benefit from the laws exempting property from execution, but all property shall be subject to execution on judgment for such damages and costs. (*As amended, Sess. Laws* 1885, *c.* 134, § 1.)

See page 658.

SHEEP INSPECTION.

*§ 64. **Appointment and term of office.** The county commissioners may, if they deem it expedient, appoint a sheep inspector, who shall be a citizen of the county for which he is appointed, for each county containing two thousand sheep, who shall hold his office for two years, unless sooner removed; and any inspector may act in an adjoining county having no inspector, on request of the commissioners thereof. (*Sess. Laws* 1885, *c.* 135, § 1.)

*§ 65. **Duties of sheep inspector.** It shall be the duty of the sheep inspector, whenever he has knowledge or information that any sheep within his jurisdiction have the scab, or any other malignant contagious disease, to inspect said flock, and report in writing the result of his inspection to the county clerk of his county, to be filed by him for reference for the county commissioners, or any party concerned; and, if so diseased, once every four weeks thereafter to reinspect said flock and report in writing the result and treatment, if any, in the same manner, until said disease is reported cured: *provided*, that in case of the removal of the flock six miles from the range of any other sheep, as hereinafter provided, he shall only make one inspection every three months. (*Id.* § 2.)

*§ 66. **Report to inspector of arrival of stock in territory—inspection in case of failure to report.** And upon the arrival of any flock of sheep into the territory, the owner or agent shall immediately report them to the inspector of the county for inspection, and the inspector shall inspect and report as provided in section two;

and in case of failure, from any cause, of owner or agent to report for inspection, a fine of one hundred dollars shall be imposed on said owner or agent for each offense by any court of competent jurisdiction, which fine, when collected, shall be paid into the county treasury for the use of the sheep inspectors' fund; and any judgment for such fine shall be a lien upon such flock. (*Id.* § 3.)

*§ 67. **Duties of owner or agent of diseased flock.** The owner, or his agent, of any flock reported by the inspector to be so diseased, shall immediately herd them, so that they cannot range upon or within one mile of any grounds accustomed to be ranged upon by any other sheep, or shall restrain them from passing over or traveling upon or within one mile of any public highway or road; and in case this cannot be done, he shall immediately remove said sheep to a locality where they shall not be permitted to range within less than six miles of any other flock of sheep, and said sheep shall continue to be herded under the above restrictions until upon inspection they shall be reported free from such disease. (*Id.* § 4.)

*§ 68. **Penalty for violation of this act.** The owner, or his agent or employes, of any flock of sheep requesting or about to be inspected, shall afford the inspector all reasonable facilities for making his inspection, and for every violation of any of the provisions of this act, said owner, or his agent or his employes, shall be fined not less than ten dollars nor more than three hundred dollars, and every separate day's offense shall constitute a separate offense; and the written report of an offense, made by an inspector, under oath, shall be *prima facie* evidence of the commission of said offense; and any justice of the peace of the county in which the offense is committed, shall have jurisdiction thereof, and the inspector shall, *ex officio*, report all violations of the provisions of this act of which he has knowledge. (*Id.* § 5.)

*§ 69. **Oath and bond of inspector.** Every inspector, before entering upon the duties of his office, shall take the oath of office prescribed by law, and shall give bond to the territory of Dakota in the sum of one thousand dollars, with good sureties, conditioned that he will faithfully perform the duties of his office. Such bond shall be approved by the county clerk, who shall indorse upon every bond he shall approve as follows: "I am acquainted with the sureties herein, and believe them to be worth the amount of the sum of the within bond, over and above their just debts and liabilities." (*Id.* § 6.)

*§ 70. **Record of and suits upon bond.** Such bond, with the oath indorsed thereon, shall be recorded in the office of the register of deeds for the county in which the inspector shall reside, and may be sued on by any person injured on account of the unfaithful performance of said inspector's duty: *provided*, that no suit shall be so instituted after more than twelve months have elapsed from the time the cause of action occurred [arose.] (*Id.* § 7.)

*§ 71. **Record of official acts of inspector.** Every inspector shall keep a fair and correct record of all his official acts, and, if required,

give a certified copy of any record, upon payment of the fees therefor; and in case of the inspector's death, resignation, or removal, said record shall be deposited with the register of deeds. (*Id.* § 8.)

*§ 72. **Fees of inspection.** The inspector shall receive for his services four dollars per day while necessarily employed in inspecting; and for the first inspection an additional fee of one-half cent for every sheep, when the flock inspected is five hundred or less; and for inspecting larger flocks, two dollars and fifty cents for the first five hundred, and one-fourth cent each for the remainder of said flock, to be paid by the owner or his agent, and two cents per line of ten words for any official report or document: *provided*, if any person shall keep several separate flocks of sheep, and some flock or flocks be not infected with scab, the owner shall be required to pay only the fees for inspection of such infected flock or flocks: and *provided, further*, that when an inspection is made, and the result shall show no disease, the inspector shall give the owner a written statement to that effect, and shall be paid for said inspection as provided in section fourteen. The inspector shall receive ten per cent. of all fines and penalties in cases in which he gives information of the offense, and his interest in the result shall not affect his competency as a witness, and all fines and penalties, except as herein provided, shall be paid to the county treasurer, as part of the inspection fund of the county. (*Id.* § 9.)

*§ 73. **By whom notices to be served.** The notice herein shall be served by the inspector or the sheriff, or any constable of the county. (*Id.* § 10.)

*§ 74. **Amount of fine for false report by inspectors.** Whenever a sheep inspector shall willfully or falsely report any sheep subject to disease, he shall be subjected to a fine of ten times the amount of the fees charged by him for the inspection; and if he shall willfully or falsely report any sheep inspected by him free from disease that are thus infected, he shall be subjected to a penalty not exceeding three hundred dollars for each offense. (*Id.* § 11.)

*§ 75. **For what causes inspectors may be removed.** If any sheep inspector shall be found guilty of either of the offenses set forth in section eleven, or if, on complaint in writing by any three wool-growers of the county, the county commissioners, after allowing the inspector a fair hearing, shall be of opinion that he is incompetent to discharge intelligently and efficiently the duties of his office, or that, having sufficient knowledge or information, he has for any cause willfully or negligently failed to make the required inspection, or that he has needlessly made inspections for the purpose of securing fees, or that his reports have been influenced by favor or prejudice, or from any cause he has failed in the proper discharge of the duties of his office, it shall be the duty of said commissioner to declare said inspector's office vacant, and to make a new appointment. (*Id.* § 12.)

*§ 76. **Owner to dip on own premises.** Every owner of sheep having scab or other malignant contagious disease shall dip or otherwise treat the same upon his own premises: *provided*, that when he has

more than one ranch or set of ranches, and the diseased sheep are not upon the ranch where his dipping works or other facilities for treating the disease are situated, he shall have the right to drive through intermediate ranges; but in so doing shall consult the owners or occupants of said range as to where he shall cross the same, and in no case shall he enter another corral, or water at his troughs or accustomed watering-place, with his diseased sheep, without the written or otherwise expressed consent of the owner; and for every violation of the provisions herein he shall be subject to a penalty of not exceeding one hundred dollars. (*Id.* § 13.)

*§ 77. **Sheep inspector's fund—what shall constitute—how expended, etc.** In each county there shall be levied and assessed annually a tax not exceeding, in any one year, one-half of a mill upon the dollar of the assessed valuation of the sheep within the county, which shall be collected as other general taxes, and which, with the penalties herein provided, shall constitute a sheep inspector fund of the county, and which fund shall only be expended in the payment of the legal fees of the sheep inspector; and said fees shall only be paid by the county treasurer after they shall have been approved and allowed by the county commissioners in the same manner and form as claims against the county are approved and allowed by them; and from said fund the sheep inspector shall be paid not to exceed three dollars per day actual employment in making the annual round, which it is hereby made his duty to do between the tenth of August and the tenth of December of each year, and three dollars per day for each day actually employed in making the inspection required by sections two and three, and when he reports in substance no disease. (*Id.* § 14.)

*§ 78. **Repeal.** All acts or parts of acts in conflict with the provisions of this act are hereby repealed. (*Id.* § 15.)

See page 661.

CHAPTER XXXVII.

WEIGHTS AND MEASURES.

*§ 14. **Repeal.** Chapter one hundred and sixteen of the session laws of eighteen hundred and eighty-three, entitled "An act regulating the grading and weighing of wheat, and for other purposes, in the territory of Dakota," is hereby repealed. (*Sess. Laws* 1885, *c.* 141, § 6.)

*§ 15. **Duty of territorial treasurer.** The treasurer of the territory shall procure and keep in his office, at the capitol of the territory, the following standards of weights and measures, which shall conform in every practical [practicable] particular to the United States standards of weights and measures, to-wit: one bushel, one half-bushel, one peck, one half-peck, one quart, one wine gallon, one wine half-gallon, one wine quart,

one wine pint, one wine gill. Said measures shall be made of copper, or other suitable and substantial material. Also one surveyors' chain thirty-three standard feet in length, one yard measure, one foot measure, and one inch measure. Also one one hundred pound weight, one fifty pound weight, one twenty-five pound weight, one ten pound weight, one one pound weight, one half-pound weight, one quarter-pound weight, one one-eighth of a pound weight, one one-sixteenth of a pound or one ounce weight; one set of apothecaries' weights, from one pound to one grain; one set of Troy weights, from one pound to one ———; besides such other scales, beams, and balances as shall be necessary to test other weights by these standards, which measures, weights, scales, beams, and balances, are hereby declared to be the legal standards of weights and measures for this territory. The said territorial treasurer shall be charged with the custody and accountable to the territory for the proper use and care of the same. Said standards shall be used only for listing the standards provided for in section 2 of this act, and said treasurer shall keep a record of all county weights, measures, beams, and balances marked and tested by him. (*Sess. Laws* 1885, *c.* 151, § 1.)

*§ 16. **Authority of county commissioners.** The county commissioners of each county are hereby authorized to purchase such duplicates of the above enumerated weights and measures as they may deem necessary for the use of their respective counties in carrying out the following provisions of this act, which duplicates shall be paid for by the county, and be delivered to the sheriff, who is hereby declared to be the sealer of weights and measures for the county, and may appoint such deputies as he may consider necessary, in different parts of the county, who shall possess the same power and perform the same duties under this act as the sheriff may, and may furnish such deputies with such duplicates as the county commissioners may be willing to provide for their separate use, or may allow them to use those provided for himself. Each and every such sealer and deputy sealer of weights and measures shall give a bond to the county, of not less than double the cost of the duplicates furnished him, conditioned that he will safely keep and care for such duplicates, and in good condition will turn them over to his successor, and upon said bond shall take and subscribe an oath of office of substantially the same form as that administered to other county officers. (*Id.* § 2.)

*§ 17. **Duty of sheriff—sealer.** The sheriff, as *ex officio* sealer of weights and measures, shall in the month of July in each year, test by his duplicates all scales, weights, and measures found by him in his county, used as provided in section four of this act, and shall give the person in charge thereof a certificate of the correctness thereof, if found to be correct, and if found to be incorrect, he shall cause the same to be made correct, if it can so be done, and if not, he shall mark the same condemned. He shall keep a record of all such certificates issued by him, and of all his transactions under this act. For testing any measure, weight, or scale as provided in this section, he may charge the owner or person in charge the sum of fifty cents: *provided*, that when any scale is tested,

the certificate shall cover the weights used with scale, and the sealer shall not be allowed to charge more than fifty cents for testing each scale and its several weights. (*Id.* § 3.)

*§ 18. **Regulations for use of weights and measures.** The county commissioners of each county shall prescribe, by resolution to that effect, what kinds and quantities of goods, wares, merchandise, grain, live-stock, and produce may be sold or exchanged with or without the use of the standard weights and measures, and tested scales, and may amend such resolution at any regular meeting; which resolution and amendments shall be entered in the minutes of their meeting, and published as part of their proceedings; and it shall be unlawful for any person, firm, or corporation, by themselves or any representative, to use any scale, weight, or measure for computing the quantity of any goods, wares, merchandise, grain, live-stock, or produce to be bought or sold by him or them in any greater quantity than that allowed by the board of county commissioners of the county without having the same conform to the standards provided for by this act, and having the same tested as provided for in section three of this act, or under the conditions named in section six. (*Id.* § 4.)

*§ 19. **Proceedings on violation of law.** Any person believing any dealer is violating any of the provisions of this act, or any subsequent resolution of the board of county commissioners, made by authority hereof, may make complaints in writing to any sealer or deputy sealer, and deposit with him five dollars, setting forth the particular facts of such violation, and that he has reason to believe that the same are true. Upon such complaint such sealer, or his deputy, shall forthwith test the scale, weights, or measures respecting the matters complained of, by his duplicates, and, if found to conform thereto, he may convert the five dollars so deposited by the complainant to his own use, as his fees for such service. If he find that any of the matters complained of be true, he shall return the five dollars to the complainant, and it shall be his duty to forthwith arrest the person in charge of such scales, and bring him to trial before any justice of the peace in the county; and, upon conviction, such person, whether the owner or not, shall be guilty of a misdemeanor, and punishable in the discretion of the court. In all such cases the sealer, or deputy sealer, making the test, shall make and swear to the complaint in court, and shall be entitled to the same fees as allowed officers making arrests upon a warrant, besides the sum of one dollar for making the test. Any sealer may, upon his own view of violation of the provisions of this act, or any subsequent resolution made by the board of county commissioners of his county, by authority hereof, arrest and bring to trial such offender in the manner above provided. (*Id.* § 5.)

*§ 20. **Liability—damages in civil actions.** It shall be the duty of every person, firm, or corporation, who desire to use any scale, weight, or measure, for computing the quantity of any goods, wares, merchandise, produce, grain, or live-stock, to be bought or sold by him or them in greater quantities than those provided in the resolutions of the county commissioners of his county, to send by mail a notice to any sealer

to test such scales, weights, or measures, and it shall be the duty of any sealer receiving such notice to test such scale, weights, or measures within ten days, and during such time before the same is tested the same may be used for such purposes, and the user shall be liable only for damages in a civil action. (*Id.* § 6.)

*§ 21. **Effect of act.** This act, as to section one, shall take effect from and after its passage and approval; and as to sections two, three, four, five, six, and seven, shall take effect and be in force in each county in this territory upon a resolution to that effect adopted by a majority of the board of county commissioners thereof. (*Id.* § 7.)

See page 663.

CHAPTER XXXVIII.

HOMESTEAD, AND CONVEYANCE THEREOF.

§ 8. **Area embraced.** Amended by adding thereto the following: "If the homestead is claimed upon any land, the title or right of possession to which was acquired or claimed under the laws of the United States relating to mineral lands, then the area of the homestead shall not exceed one acre, whether within or without a town plat." (*Sess. Laws* 1885, *c.* 65, § 2.)

See page 536.

*§ 20. **Construction of statute.** Chapter thirty-eight of the Political Code, relating to homesteads and the conveyance thereof, shall not be deemed or construed to include any gold or silver mine, or gold or silver mill, or any mill, smelter, or machinery, intended or used for the reduction or milling of gold or silver ores. (*Sess. Laws* 1885, *c.* 65, § 1.)

See page 537.

NOTE. The twentieth section of an act passed by the legislature of the territory of Dakota passed January fourteenth, eighteen hundred and seventy-five, entitled "An act making the conveyance of homesteads not valid unless the wife joins in the conveyance," shall not be construed as an absolute repeal of chapter thirty-seven of the Laws of Dakota, approved May twelfth, eighteen hundred and sixty-two, but only as repealing so much of said chapter thirty-seven as is inconsistent with the first named act, and no other effect shall be given to said section. (*Act of Congress, March* 2, 1875; 1 *Supp.* 151.)

CHAPTER XXXIX.

COMPENSATION OF PUBLIC OFFICERS.

DISTRICT ATTORNEY.

§ 5. **Salary—increase of, when.** The district attorneys shall severally receive such salaries for their services as the board of county commissioners of the proper county shall allow,—not less than four hundred dollars a year,—but the salary of such district attorneys shall not be diminished during the term for which they shall be elected or appointed. The board of county commissioners, however, shall have the power to increase the salary of such district attorneys during the term of their office, whenever, in their judgment, the compensation fixed is inadequate for their services rendered or to be rendered; said increase to take effect at the time of the passage of the resolution authorizing such increase. All fees and costs received in civil actions, in which the county is the successful party, shall be paid into the county treasury for the use and benefit of the county, and it shall not be competent or lawful for the board of county commissioners to give and pay said fees and costs, or either, or any part thereof, to such district attorney as a part of his salary, or in addition to his salary. (*As amended, Sess. Laws* 1885, *c.* 45, § 1.)

See page 539.

SHERIFF.

*§ 10*b*. **Expense and fees allowable.** The necessary expenses and legal fees of sheriffs and other officers incurred in conveying convicts to the territorial penitentiary shall be approved by the auditor of the territory, and paid out of the territorial treasury. Said auditor may allow for said expenses and fees the following rates: Three dollars per day for time of sheriff necessarily spent going to and from the prison, by the nearest route. Two dollars and fifty cents per day for each guard necessary, and such sums as may be necessary for railroad or stage fare and actual traveling expenses. Not more than one guard shall be allowed for one prisoner, and one additional guard for every two additional prisoners. When conveyance by team is necessary, a team and driver may be employed, at a rate of compensation not exceeding five dollars per day; not less than forty miles per day to be estimated as a day's travel. All bills shall be in writing, and fully itemized and verified by oath, and accompanied by the receipt of the warden of the state prison for the delivery of such convict or convicts. (*Sess. Laws* 1885, *c.* 57, § 1.)

*§ 10*c*. **Repealing clause.** Section six hundred and sixty-five and section six hundred and sixty-eight of chapter sixteen of the Code of eighteen hundred and seventy-seven, and all other acts in conflict with this act, are hereby repealed. (*Id.* § 2.)

*§ 10*d*. **Conveying insane persons and convicts.** The necessary expenses and legal fees of sheriffs, and other officers, incurred in

conveying insane persons to the hospitals in this territory, or convicts to the penitentiary, shall be approved by the auditor of the territory and paid out of the territorial treasury. Said auditor may allow for said expenses and fees the following rates: Three dollars per day for time of sheriff necessarily spent going to and from the prison or asylum, by the nearest route. Two dollars and fifty cents per day for each guard necessary, and such sums as may be necessary for railroad or stage fare and actual traveling expenses. Not more than one guard shall be allowed for one insane person or convict. All bills shall be in writing and fully itemized, and verified by oath, and accompanied by the receipt of the superintendent of the insane hospital or warden of the penitentiary, for the delivery of such insane person or convict. (*Sess. Laws* 1885, *c.* 58, § 1.)

*§ 10*e*. **Repealing clause.** All acts now in force regulating the fees of officers for transporting insane persons or convicts are hereby repealed. (*Id.* § 2.)

See page 664.

JURORS.

§ 20. **Compensation.** Amended by striking out the word "case," in the last line of said section, and inserting in lieu thereof the words "day or part of days." (*Sess. Laws* 1885, *c.* 59, § 1.)

See page 547.

CHAPTER XL.

PUBLIC EDUCATION.

§ 53. **Certain funds to be applied to schools.** Amended by striking out the words, "and all money paid into the county treasury for licenses to sell intoxicating liquors." (*Sess. Laws* 1885, *c.* 111, § 1.)

*§ 53*a*. **Fines, forfeitures, etc.** All fines, forfeitures, and pecuniary penalties prescribed as a punishment for crime, and collected under the general laws of the territory, and all money paid into the county treasury for licenses to sell intoxicating liquors in the various counties, shall be placed in and become a part of the general county fund. (*Id.* § 2.)

*§ 53*b*. **Effect of act.** This act shall take effect and be in force from and after July fifteenth, eighteen hundred and eighty-five. (*Id.* § 3.)

See page 571.

SCHOOL TOWNSHIP BONDS.

*§ 159. **School township may issue bonds.** 1. Said bonds shall not be issued to an amount exceeding seven hundred dollars for each single-room school-house hereafter built; shall draw interest at a rate not to exceed eight per cent. per annum, and may be sold at not less

than ninety cents on the dollar of their par value, including accrued interest, which discount shall cover all cost of preparing, selling, and delivering the bonds and receiving the money therefor.

2. Such bonds shall be sold for money only, and the money shall be actually paid into the treasury of the school township, and they shall not be exchanged for property of any kind, and no contract other than for the sale shall be made in connection therewith.

3. Said bonds shall be made payable at some financial agency in either the city of New York or the city of Boston, and such agency may be inserted in the bonds after their negotiation and sale; but the treasurer of the school township shall enter and keep in his books the number and amount of all bonds sold, and the time and place for all payments. (*As amended*, *Sess. Laws* 1885, *c.* 50, § 1.)

*§ 159*a*. **How expended.** The money raised by the sale of such bonds shall be expended solely for the building and furnishing school-houses, and shall be paid out only upon warrants duly drawn upon the treasurer by order of the board, appearing in the minutes of their proceedings, for work already done or material furnished; and the same rule shall apply to all payments of school money for any purpose. (*Id.* § 2.)

*§ 159*b*. **Building to be by contract.** No school-house shall be built by a school township except upon contract in writing, let to the lowest responsible bidder or bidders, after advertisement for proposals, upon plans and specifications, published not less than three weeks before the letting in some newspaper printed in the county, and the board may reject any and all bids, and advertise for proposals anew. No contract shall be let to any member of the board, or to any member of their families, or to any brother or sister of any member thereof. (*Id.* § 3.)

*§ 159*c*. **Who not to be interested in contract.** No member of a school township board and no county superintendent shall be personally or financially interested, either directly or indirectly, in any contract, purchase, or sale of property for the school township or the schools; or in the purchase, sale, or adoption of text-books for the schools, or any other matter bought or sold by the school township or by its board, or any officer for it or for its schools. (*Id.* § 4.)

See page 666.

SCHOOL-HOUSE BONDS.

*§ 167. **Redemption of old bonds.** Amended by inserting the words "and warrants" after the word "bonds," where it occurs in the third line of said section. (*Sess. Laws* 1885, *c.* 51, § 1.)

See page 668.

SCHOOL TOWNSHIPS.

*§ 172. **Election for organization of.** The first election to organize a school township shall be ordered by the board of county commissioners, and the notices shall be made, signed, and posted by the proper officers of the county, the same as provided by law for general elections; but no school-township shall be organized until the county board are satisfied

that it has at least eight thousand dollars of taxable property, and not less than twenty children of school age resident within it. All subsequent elections shall be called by the township school board, who shall cause not less than five notices thereof to be posted in five of the most public places in the township, not less than ten days before the election, which notice shall be signed by the clerk, or, in his absence, by the director. (*Sess. Laws* 1885, *c.* 49, § 1.)

*§ 173. **Extent of area.** No township shall hereafter be organized with an area of more than ninety square miles or land sections. (*Id.* § 2.)

*§ 174. **Boundaries.** School townships may or may not conform in respect to their boundaries to those of civil townships, and may or may not bear the same name. (*Id.* § 3.)

*§ 175. **Levy of annual tax.** School township boards may levy the annual school tax at any time after the assessment is made prior to August fifteenth in any year. (*Id.* § 4.)

*§ 176. **Warrants for indebtedness.** No warrant shall be issued except for an indebtedness incurred prior to its issue. (*Id.* § 5.)

*§ 177. **Location of school-houses.** School-houses may be located nearer than one mile to the township boundary, when public convenience requires that it be so done. (*Id.* § 6.)

*§ 178. **Instructions on temperance, physiology, and hygiene.** In every public school the teacher shall give instruction orally upon the subjects of temperance, physiology, and hygiene. (*Id.* § 7.)

*§ 179. **Terms of schools.** All school corporations and districts in all the counties of the territory shall keep open and maintain public schools for not less than six months each school year, where said corporation or district contains twenty or more pupils, and the levy allowed by law upon the assessed valuation is sufficient for that purpose. (*Id.* § 8.)

*§ 180. **Annual reports to be made.** All boards of education, independent school-districts, and other school boards, shall make regular annual reports to the county superintendent, who shall in turn report to the territorial superintendent. This provision shall apply to all graded and high schools. (*Id.* § 9.)

*§ 181. **Compensation of school officers.** The boards of education of all school townships and independent school-districts may pay their members for actual services rendered, not more than thirty dollars per annum, and not more than two dollars per day, for services duly rendered in connection with their official duties. (*Id.* § 10.)

*§ 182. **Distribution of copies of school laws.** The territorial superintendent of public instruction shall cause to be printed, in pamphlet form, a sufficient number of copies of the laws relating to public schools, for distribution among the school boards of the various school corporations and districts of the territory; and there is hereby appropriated out of the territorial treasury a sum sufficient to pay all the nec-

essary cost of printing, binding, and distribution of the same; and the accounts therefor shall be certified by the territorial superintendent to be true, correct, and just, and shall be paid to the proper persons by warrants of the territorial auditor upon the territorial treasurer. (*Id.* § 11.)

*§ 183. **Purchase of school supplies and bonds.** No county superintendent shall be interested directly or indirectly in the sale or purchase of any school supplies or school bonds, but may advise school officers as to their duties regarding the purchase of such supplies or sale of such bonds. (*Id.* § 12.)

*§ 184. **School-districts—township officers.** Township officers shall belong to different schools, except where there are less than three schools in the township. All those counties having the school-district system in force shall be governed by chapter forty of the Political Code of eighteen hundred and seventy-seven, in every case where the acts of the fifteenth legislative assembly shall be found inconsistent for the government of the same, and the fees of district officers shall in all cases be governed by the district as provided in said chapter forty, regulating the government of school-districts. And, for the purposes of carrying out the provisions of this section, said chapter forty of the Political Code of eighteen hundred and seventy-seven is hereby revived, and made of full force and effect, so far as it relates to counties excepted from the operation of the school township system. (*Id.* § 13.)

SCHOOL-DISTRICT BONDS.

*§ 185. **When bonds may be lawfully issued.** Whenever a duly-constituted school-district in any organized county of the territory, at a regular school-district meeting, or at a special meeting lawfully held for the purpose, shall determine, by a majority vote of all the qualified electors of said district present and voting at such meeting, to issue school-district bonds for the purpose of building and furnishing a schoolhouse, and purchasing grounds on which to locate the same, the school board may lawfully issue such bonds in accordance with the provisions hereinafter contained. (*Sess. Laws* 1881, *c.* 24, § 1.)

*§ 186. **Proceedings for election — ballots, petition, etc.** Before the question of issuing bonds shall be submitted to a vote of the district, notices shall be posted in at least three public and conspicuous places in said district, stating the time and place of meeting, the amount of bonds that will be required to be issued, and the time in which they shall be made payable, at least twenty days before the time of meeting; and the voting shall be done by means of written or printed ballots, and all ballots deposited in favor of issuing bonds shall have thereon the words, "For issuing bonds," and those opposed thereto shall have thereon the words, "Against issuing bonds;" and if a majority of all the votes cast shall be in favor of issuing bonds, the school board, or other proper officers, shall forthwith proceed to issue bonds in accordance with the vote; but if a majority of all the votes cast are opposed to issuing bonds, then no further action can be had, and the question shall not be again submitted to vote for one year thereafter: *Provided, however*, that the

question of issuing bonds shall not be submitted to a vote of the district, and no meeting shall be called for that purpose, until the district-school board shall have been so petitioned in writing by a majority of the resident electors of said school-district. (*Id.* § 2.)

*§ 187. **Denomination and interest — limit.** The denomination of the bonds which may be issued under the provisions of this act shall be fifty dollars, or some multiple of fifty, not exceeding five hundred dollars, and shall bear interest at a rate not exceeding eight per cent. per annum, payable annually in accordance with interest coupons which shall be attached to said bonds; and no greater amount than fifteen hundred dollars can be issued by any district, except in towns and cities of more than one thousand inhabitants; and in such districts the amount shall not exceed five per cent. of its assessed valuation, and may be made payable in not less than ten nor more than twenty years from their date. (*Id.* § 3.)

*§ 188. **Form of bonds.** Whenever any bonds are issued under the provisions of this act, they shall be lithographed or printed on good bond paper, and shall state upon their face the date of their issue, the amount of the bond, to whom and for what purpose issued; also the time and place of payment, and the rate of interest to be paid. They shall have printed upon the margin the words, "authorized by act of legislative assembly, A. D. 1881," and upon the back of the bonds a certificate signed by the district clerk in substantially the following form: "I certify that the within bond is issued in accordance with a vote of school-district No: ———, at a regular (or special, as the case may be) meeting on the ——— day of ———, A. D. 188—, to issue bonds to the amount of ——— dollars." They shall be signed by the director and clerk of the school-district, or by the president and secretary of the school-board in case of an independent district, and shall be numbered and registered in a book, to be kept by the secretary, in which shall be entered the number, date, and name of the person to whom issued, with the date when the same shall become due. (*Id.* § 4.)

*§ 189. **Provision for payment of principal and interest.** In addition to the amount that may already be assessed under existing law, there shall be levied upon the taxable property of all districts so issuing bonds, and collected as other taxes are collected, a sum sufficient, not exceeding five mills on the dollar of the assessed valuation of said districts, to pay the interest upon such bonded indebtedness; and after five years, in like manner, a further tax of two mills upon the dollar for a sinking fund, to be used in payment of such bonds when they become due, and for no other purpose, except that whenever there may be sufficient funds on hand belonging to such sinking fund, the school board may, in their discretion, purchase any of its outstanding bonds at their market value, and pay for the same out of the sinking fund; and in no case shall such district or districts levy any part of the one per cent. allowed by law to be assessed for building school-houses. (*Id.* § 5.)

*§ 190. **Who may sell bonds, and at what price.** Whenever any bonds shall be issued under the provisions of this act, the school board shall have authority to negotiate and sell such bonds for not less than ninety per cent. of their par value, and the proceeds of such sale shall be paid to the school-district treasurer, or the treasurer of the school board, and shall be used for the purpose only of building and furnishing a school-house, and in payment for a site for the same. (*Id.* § 6.)

*§ 191. **Payment and cancellation of bonds.** Whenever the bonds of any school-district shall have been purchased by the school board, they shall be canceled by writing or printing in red ink the words "Canceled and paid" across each bond and coupon, and the date of payment and amount paid shall be entered in the clerk's or secretary's register against the proper number of the bond, and the bonds so canceled shall be filed in the office of the district treasurer until all the outstanding bonds are paid, when they shall be destroyed in the presence of the full board. (*Id.* § 7.)

*§ 192. **Advertising for proposals for building school-house.** Whenever any school-house is built with funds provided in the manner hereby authorized, the school board shall advertise at least thirty days in some newspaper printed in the county, or by posting notices as provided for calling school-district meetings, if no newspaper is printed in such county, for sealed proposals for building and furnishing such school-house in accordance with plans and specifications which shall be furnished by the school board, reserving the right to reject any and all bids; and if any of the proposals shall be reasonable and satisfactory, said board shall award the contract to the lowest responsible bidder, and shall require of such contractor a bond in double the amount of the contract, conditioned that he will properly account for all money and property of the district that may come into his hands, and that he will perform the conditions of his contract in a faithful manner and in accordance with its provisions; and in case all the proposals shall be rejected, said board shall advertise anew in the same manner as before, and until a reasonable bid shall be submitted. (*Id.* § 8.)

*§ 193. **This act applies to districts that have heretofore constructed buildings.** The provisions of this act shall be applicable to, and authorize the issue of bonds by, such school-districts as have already built school-houses, and issued orders or warrants therefor; and any such district may vote to bond the indebtedness incurred by reason of building and furnishing a school-house, and purchasing site for the same, and bonds may be issued in the same manner as herein provided for building and furnishing school-houses. (*Id.* § 9.)

*§ 194. **Penalty for violating provisions of this law.** Any violation of the provisions of this act shall be deemed a misdemeanor, and punishable by a fine not exceeding one hundred dollars; and any conversion or misappropriation of the bonds or money that may be issued or obtained under the provisions of this act, shall be deemed a fel-

ony, and be punished by a fine not exceeding five hundred dollars, or by imprisonment in the territorial prison not exceeding two years, or by both such fine and imprisonment, in the discretion of the court before [which] any person is convicted. (*Id.* § [10] 11.)

UNIVERSITY OF DAKOTA.

*§ 195. **Purpose, tuition, etc.** The objects of the University of Dakota, established by an act of the legislative assembly of the territory of Dakota, entitled "An act to locate the University of the Territory of Dakota," approved April twenty-first, A. D. eighteen hundred and sixty-two, shall be to provide the best and most efficient means of imparting to young men and women, on equal terms, a liberal education, and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the courses of study in its collegiate and scientific departments at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies in such branches as are taught in the common schools throughout the territory. No student who shall have been a resident of the territory one year next preceding his admission, shall be required to pay any fees for tuition in the university, except in the law department and for extra studies. The regents may prescribe rates of tuition for any pupil in the law department, or who shall not have been a resident of the territory as aforesaid, and for teaching extra studies. (*Sp. Laws* 1883, *c.* 38, § 1.)

*§ 196. **No sectarian control.** The university shall never be under the exclusive control of any religious denomination whatever, and no instruction, either sectarian in religion, or partisan in politics, shall ever be allowed in any department of the university. (*Id.* § 2.)

*§ 197. **How governed.** The university shall be governed by a board of regents, consisting of the governor of the territory, who shall be president of the board, *the president of the university, and superintendent* of public instruction, who shall each be a member of said board of regents by virtue of his office, together with six other competent persons, who shall be appointed by the governor by and with the consent of the legislative council. (*Id.* § 3.)

*§ 198. **Regents, how appointed.** Immediately upon the passage and approval of this act the six persons shall be appointed, and shall hold their offices for the term of two and four years, respectively, and the governor shall designate in his appointments the three persons who shall hold their office for two years, and the three for four years. (*Id.* § 4.)

*§ 199. **Vacancies.** The board of regents shall fill vacancies occurring therein, except when the legislature is in session; and the persons so appointed shall hold their offices until the next session of the legislature, when the governor, with the concurrence of *of* the legislative council, shall fill all vacancies. (*Id.* § 5.)

*§ 200. **Departments.** The university shall include a collegiate, scientific, normal, and such other departments, with such courses of instruction and elective studies, as the board of regents may determine; and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction, as are usually conferred and granted by other universities. (*Id.* § 6.)

*§ 201. **Meetings.** The meetings of the board of regents shall be held at such times as the board may appoint. The president of the board may call special meetings when he deems it expedient, or special meetings may be called by any three members of the board. (*Id.* § 7.)

*§ 202. **Finances.** An executive committee, consisting of three competent and responsible persons, shall be appointed by the board of regents, who shall audit all claims, and whose chairman shall draw all orders for such audited claims upon the treasurer; but before payment such orders shall be countersigned by the secretary. Said committee shall keep a specific and complete record of all matters involving the expenditure of money, which record shall be submitted to the board of regents at each regular meeting of same. (*Id.* § 8.)

*§ 203. **Erection of buildings.** Whenever any building is to be erected, or extensions, alterations, or repairs are to be made, in connection with the university, or other improvements, the board of regents shall have authority to procure all necessary plans, drawings, and specifications for such building, alterations, repairs, or improvements; to advertise for proposals for the erection and completion or performance thereof, in such manner as may be most advantageous, and to contract with the lowest responsible bidder therefor,—such contractor in every case to give adequate security for the faithful performance of his contract; to appoint and discharge a building superintendent, who shall superintend the work and perform such other duties as they may require, and receive such compensation as the board shall determine; and to examine and certify to the correctness of the estimates and accounts for work under the contract, and of their superintendent and employes. (*Id.* § 9.)

*§ 204. **Secretary.** The board of regents shall elect a secretary, who shall hold his office at the pleasure of the board. He shall record all the proceedings of the board of regents, and carefully preserve all books and papers. He shall countersign and register all orders for money on the treasurer; and the treasurer shall not pay an order on him for money unless the same be countersigned by the secretary. (*Id.* § 10.)

*§ 205. **Treasurer.** The board of regents shall elect a treasurer, who shall hold his office at the pleasure of the board. He shall keep a true and faithful account of all moneys received and paid out by him, and before entering upon the duties of his office he shall take and subscribe an oath that he will faithfully perform the duties of treasurer; and he shall also give a bond in a penal sum fixed by said board, conditioned for the faithful discharge of his duties as treasurer, and that he will at all times keep and render a true account of moneys received by him as treasurer, and of the disposition he has made of the same; and

that he will at all times be ready to discharge himself of the trust, and to pay over when required; which bond shall have two or more good securities, and shall be approved as to its form and sufficiency of its sureties by the board of regents, and also the auditor and secretary of the territory, and shall be filed in the office of the latter. (*Id.* § 11.)

*§ 206. **Rules.** The board of regents shall enact rules for the government of the university, and shall appoint a president, and the requisite number of professors and tutors, together with such other officers as they may deem expedient, and shall determine the salaries of such officers, the compensation of the secretary and treasurer. They shall remove any officers connected with the university, when, in their judgment, the good of the institution requires it. (*Id.* § 12.)

*§ 207. **Purchase of apparatus.** The board of regents is authorized to expend such sums of money as may be appropriated for the university funds as it may deem expedient, in the purchase of apparatus, library, and a cabinet of natural history, in providing suitable means to keep and preserve the same, and in procuring all other necessary facilities for giving instruction. (*Id.* § 13.)

*§ 208. **Cabinet.** All specimens of natural history and geological and mineralogical specimens, which are, or hereafter may be, collected by the territorial geologist, or by any others appointed by the territory to investigate its natural and physical resources, or donated by any person, shall belong to and be the property of the university, and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department. (*Id.* § 14.)

*§ 209. **Report of president.** The president of the university shall make a report, on the fifteenth day of September preceding the meeting of the legislative assembly, to the board of regents, which shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes, and residences, and such other matters as he may deem proper to communicate. (*Id.* § 15.)

*§ 210. **Report of board.** The board of regents shall, on the first day of October preceding each regular meeting of the legislative assembly, make a report to the superintendent of public instruction, which report, with that of the president of the university, shall be embodied in the said superintendent's report to the legislative assembly. The report of the board of regents shall contain the number of professors, tutors, and other officers, with the compensation of each, the condition of the university fund, and the income received therefrom, the amount of expenditures, and the items thereof, with such other information and recommendations as they may deem expedient to lay before the legislative assembly. (*Id.* § 16.)

*§ 211. **Mileage.** The regents shall receive no compensation except for actual expenses in traveling to and from their places of meetings,

and also their actual expenses while discharging any other duties in connection with their office. (*Id.* § 17.)

*§ 212. **Franchises heretofore granted to vest in present board.** The said board of regents shall succeed to the custody of the book, records, buildings, and all other property, real and personal, of the University of Dakota, incorporated on the nineteenth day of May, eighteen hundred and eighty-one, under chapter fourteen of the Civil Code; and the present board of trustees shall be dissolved immediately upon the organization of the board of regents herein provided for, and the deed or grant of all of said property, together with all the rights, privileges, and franchises of said corporation, is hereby accepted, and said deed or grant is hereby legalized, and declared to be and remains in full force and effect; and the grant of land from the United States of America to the territory of Dakota, made in "An act entitled 'An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming, for university purposes,'" is hereby accepted by this territory with all the privileges, rights, and restrictions in said act provided. (*Id.* § 18.)

NOTE. Special Act—An act to provide for funds for the purpose of completing the present building of the University of Dakota, and for constructing the main building thereof, and for other purposes. (*Sp. Laws* 1883, c. 39, *p.* 369.)

FINISHING MAIN BUILDING OF UNIVERSITY.

*§ 213. **Appropriation.** There is hereby appropriated, out of the funds provided for in this act, the sums hereinafter mentioned, for the erection of buildings on the grounds of the University of Dakota, and other necessary expenses, as follows, namely:

1. For heating, plumbing, and sewerage, five thousand dollars.
2. Completing and deficiency in constructing main building, and furnishing the main building of the University of Dakota, ten thousand dollars. (*Sess. Laws* 1885, *c.* 27, § 1.)

*§ 214. **Bonds to be issued.** To provide such funds, bonds of this territory shall be issued to the amount of fifteen thousand dollars, in denominations of five hundred dollars, bearing date the first day of May, eighteen hundred and eighty-five, with interest payable semi-annually, at some place in New York city, to be specified in said bonds, on the first day of July and January of each year, at the rate of six per cent. per annum, running twenty years, and payable at the option of the territory at any time after five years from date of the same. (*Id.* § 2.)

*§ 215. **Bonds—how executed.** Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer, and shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Id.* § 3.)

*§ 216. **Proposals for bonds.** It shall be the duty of the territorial treasurer to receive sealed proposals for the purchase of said bonds, after giving notice for thirty days in two newspapers of general circulation, one of which shall be published in the territory and the other in the city of New York, and said bonds shall be sold to the high-

est and best bidder, for cash, and said bonds shall not be sold for less than par. (*Id.* § 4.)

*§ 217. **Tax for payment of bonds.** For the purpose of prompt payment of the principal and interest of the bonds herein provided, there shall be levied by the territorial board of equalization, at the time the other taxes are levied and collected, in the same manner as other territorial taxes are collected, such sums as shall be sufficient to pay such interest and the exchange thereon, and after ten years from the first day of May, eighteen hundred and eighty-five, in addition thereto, a sinking-fund tax shall be annually levied, sufficient to retire and pay said bonds at their maturity; and it shall be the duty of the territorial treasurer to pay promptly, on the first day of July and January of each year, at the Chemical National Bank in the city of New York, such interest as shall then be due, and to purchase said bonds at not more than their par value, and retire and cancel the same with the sinking-fund tax as fast as the same shall be received; and no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 5.)

*§ 218. **Payment of interest.** If for any reason the territorial treasurer shall not have in his hands sufficient of the funds herein provided to pay either principal or interest upon such bonds, when due, he shall pay such interest or principal out of any other unappropriated fund belonging to the territory; and there is hereby appropriated and set apart, out of the general fund belonging to the territory, a sum sufficient to pay such interest on said bonds as may become due before the funds and tax herein provided can be available, and it shall be the duty of said treasurer to pay said interest promptly at the time it falls due out of said funds. (*Id.* § 6.)

*§ 219. **Replacing funds.** All moneys belonging to the general territorial fund, applied by said treasurer in payment of either principal or interest of said bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 7.)

*§ 220. **Plans and specifications.** The board of regents of the University of Dakota shall, immediately after passage and approval of this act, prepare, or cause to be prepared, plans and specifications for building the additions and improvements enumerated in section one of this act, and after the same shall have been adopted and approved by them and the governor of the territory, said board of regents shall cause said plans and specifications to be filed with their secretary, and it shall be the duty of said board, within twenty days thereafter, to give public notice, which notice shall be inserted for thirty days in two newspapers published in the territory and of general circulation therein, and in two newspapers published in other states, and that on a day specified in such notice they will receive sealed proposals at the office of the secretary of the board of regents of the University of Dakota, according to plans and specifications aforesaid, which shall be open for inspection of

bidders at the office of the secretary of the board of regents of the University of Dakota, or at such place as the board may designate. (*Id.* § 8.)

*§ 221. **Total cost.** The cost of said buildings and improvements shall not exceed the sum of fifteen thousand dollars, and shall be used in the manner provided in section one of this act. (*Id.* § 9.)

*§ 222. **Awarding contract.** On the day advertised for the opening of said proposals for erecting and completing the said additions and improvements, the board of regents shall proceed to award the contract or contracts, reserving the right to reject any or all bids if, in their judgment, they are too high, and may again advertise for proposals, or accept such bids as in their judgment may be for the best interest of the institution. (*Id.* § 10.)

*§ 223. **How built.** The walls of said buildings shall be constructed of good brick or stone, and shall be made as near fire-proof as practicable, and at a proper and safe distance from the main building. (*Id.* § 11.)

*§ 224. **Partial payments.** The board of regents, as the work progresses, shall, on application of the contractor or contractors, certify to the territorial auditor the value of the work done on the said additions and improvements at the time, and on such certified statement the auditor shall issue a warrant on the territorial treasurer for a sum not exceeding seventy-five per cent. of the value of the work so certified to have been done on said additions and improvements at the time of making such application, including the amount of all warrants previously issued in part payment of such work: *provided*, that no part of the funds herein appropriated for the construction of said additions and improvements shall be paid, or value of work certified by the regents, until at least one-fourth of the work has been completed by the contractor or contractors. (*Id.* § 12.)

*§ 225. **Material to be of good quality.** The contract or contracts aforesaid shall stipulate that all material shall be of good quality, and that the work shall be performed in a good, workmanlike manner, and these stipulations shall be enforced. (*Id.* § 13.)

*§ 226. **Final payment.** The balance due the contractor or contractors, under the contract or contracts, shall be paid on the completion of the additions and improvements, and their acceptance and approval by the board of regents. (*Id.* § 14.)

*§ 227. **On division of territory.** In case of the division of the territory, that part of the territory of Dakota in which said university is located, shall, on the division of the territory, assume and pay bonds and coupons outstanding on account of the construction of said university. (*Id.* § 15.)

*§ 228. **Government of university.** The University of Dakota shall be governed by a board of five directors, to be appointed by the governor, by and with the consent of the legislative council, who shall hold their office for two years, or until their successors are elected

and qualified, and the office of regents is hereby abolished, and the powers and duties conferred upon the regents provided for in section three of chapter thirty-eight of the laws of eighteen hundred and eighty-three, are hereby conferred upon the board of directors hereby authorized to be appointed, and said section is hereby repealed. (*Id.* § 16.)

*§ 229. **Repealing clause.** All acts or parts of acts in conflict with this act are hereby repealed. (*Id.* § 17.)

FUNDS FOR CONSTRUCTION OF MAIN BUILDING.

*§ 230. **Territorial bonds.** For the purpose of providing funds to pay the deficiency caused by the erection of a main building, and improve the grounds and out-buildings, purchase apparatus and water supply, for the University of North Dakota, at Grand Forks, Dakota territory, the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue twenty-four thousand dollars of territorial bonds, running for a term or period of twenty years, and payable at the option of the territory after a term of ten years, and bearing interest at the rate of six per cent. per annum, with coupons attached, made payable semi-annually on the first day of July and January each year. Such bonds shall be executed, under the seal of the territory, by the governor and treasurer, and shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Sess. Laws* 1885, *c.* 26, § 1.)

*§ 231. **Proposals for purchase of.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, and upon request of the board of regents he shall give public notice for thirty days in two newspapers of general circulation, one of which shall be published in the city of New York, and said bonds shall be sold to the highest bidder, for cash: *provided*, that said bonds shall not be sold for less than their par value. (*Id.* § 2.)

*§ 232. **Taxes for payment of.** For the purpose of prompt payment of principal and interest of the bonds herein provided, there shall be levied by the territorial board of equalization, at the time the other taxes are levied, and collected in the same manner as other territorial taxes are collected, such sum as shall be sufficient to pay such interest, and exchange thereon; and after ten years from the first day of May, eighteen hundred and eighty-five, and in addition thereto, a sinking-fund tax shall be annually levied, sufficient to retire and pay said bonds at their maturity. And it shall be the duty of the territorial treasurer to pay promptly, on the first day of July and January of each year, such interest as shall then be due, and to purchase said bonds at their market value, and retire and cancel the same with the sinking-fund tax, as fast as the same shall be received; and no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 3.)

*§ 233. **General fund — appropriation.** If, for any reason, the territorial treasurer shall not have in his hands sufficient funds herein

provided to pay the interest upon such bonds when due, he shall pay such interest out of any other unappropriated fund belonging to the territory. And there is hereby appropriated and set apart, out of the general funds belonging to the territory, a sum sufficient to pay such interest on said bonds as may become due before the funds and tax herein provided can be made available; and it shall be the duty of said treasurer to pay said interest promptly, at the time it falls due, out of said funds. (*Id.* § 4.)

*§ 234. **Replacement of fund.** All moneys belonging to the general territorial fund, applied by said treasurer in payment of the interest on said bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 5.)

*§ 235. **Appropriation of funds realized by sale of bonds.** There is hereby appropriated out of the territorial treasury all the funds realized by the sale of the bonds provided for in this act, for deficiency in construction of building as now built, twenty thousand three hundred and sixty-two dollars; for library, one thousand dollars; improving grounds, five hundred dollars; for water-closets, five hundred dollars; for apparatus for laboratory, etc., one thousand dollars; for water supply, six hundred and thirty-eight dollars. (*Id.* § 6.)

*§ 236. **Warrants drawn.** It shall be the duty of the auditor of the territory, upon the application of the board of regents, or a majority thereof, to draw warrants on the territorial treasurer for the purpose of carrying out the provisions of the aforesaid act. (*Id.* § 7.)

*§ 237. **On division of territory.** In case the territory of Dakota is divided, the bonds issued under the provisions of this act shall be paid by that portion of the territory within which said university is situated. (*Id.* § 9.)

UNIVERSITY AT GRAND FORKS.

*§ 238. **Where established.** That there be, and is hereby, established in this territory, at the city of Grand Forks, in the county of Grand Forks, an institution of learning by the name and style of the "University of North Dakota." (*Sp. Laws* 1883, *c.* 40, § 1.)

*§ 239. **Board of regents.** The government of the university shall vest in a board of regents, to consist of five members, to be appointed by the governor, by and with the consent of the council, and the governor shall, during the term of his office, be a member of said board. The term of office of said regents shall be, two for two years, and three for four years, for the first term, and for four years thereafter, from and after their appointment, unless sooner removed by the governor for cause; but appointment to fill vacancies, before the expiration of a term, shall be for the residue of the term only. (*Id.* § 2.)

*§ 240. **Powers and duties of board.** The board of regents and their successors in office shall constitute a body corporate, by the name of "The Regents of the University of North Dakota," and shall

possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings, and all other property of said university. The board shall elect a president and a secretary, who shall perform such duties as may be prescribed by the by-laws of the board. The secretary shall keep a faithful record of all the transactions of the board, and of the executive committee thereof. The territorial treasurer shall be the treasurer of the board, and perform all the duties of such office, subject to such regulations as the board may adopt, not inconsistent with his official duties, and he and his sureties shall be liable on his official bond as territorial treasurer for the faithful discharge of such duties. (*Id.* § 3.)

*§ 241. **Regular and special meetings.** The time for the election of the president and secretary of said board, and the duration of their respective terms of office, and the time for holding the regular annual meeting, and such other meetings as may be required, and the manner of notifying the same, shall be determined by the board, shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. (*Id.* § 4.)

*§ 242. **Laws, regulations, and instruction.** The board of regents shall enact laws for the government of the university in all its branches; elect a president and the requisite number of professors, instructors, officers, and employes, and fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of regents, or in the election of professors, teachers, or other officers of the university, or in the admission of students thereto, or for any purpose whatever. The board of regents shall have power to remove the president, or any professor, instructor, or officer of the university, when in their judgment the interests of the university require it. The board may prescribe rules and regulations for the management of the libraries, cabinet, museum, laboratories, and all other property of the university, and of its several departments, and for the care and preservation thereof, with penalties and forfeitures by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction of such actions. (*Id.* § 5.)

*§ 243. **May expend funds.** The board of regents are authorized to expend such portion of the income of the university fund as they may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets, and additions thereto; and if they deem it expedient, may receive, in connection with the university, any college in this territory, upon application of its board of trustees; and such college so received shall become a branch of the university, and be subject to the visitation of the regents. (*Id.* § 6.)

*§ 244. **Report.** At the close of each fiscal year the regents, through their president, shall make a report in detail to the governor, exhibiting the progress, condition, and wants of each of the colleges embraced in the university, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, costs, and results of all important investigations and experiments, and such other information as they may deem important, one copy of which shall be transmitted free by the governor of the territory to all colleges endowed under the provisions of the act of congress entitled "An act donating land to the several states and territories which provide colleges for the benefit of agriculture and mechanic arts," approved July second, eighteen hundred and sixty-two, and also one copy *of* [to] the secretary of the interior, as provided in said act. (*Id.* § 7.)

*§ 245. **Powers of president.** The president of the university shall be president of the several faculties, and the executive head of the instructional force in all its departments; as such, he shall have authority, subject to the board of regents, to give general direction to the instruction and scientific investigations of the several colleges, and, so long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. The immediate government of the several colleges shall be intrusted to their respective faculties, but the regents shall have the power to regulate the course of instruction, and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other causes prescribed in such by-laws. (*Id.* § 8.)

*§ 246. **Object of university.** The object of the University of North Dakota shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial, and professional pursuits, in the instruction and training of persons in the theory and art of teaching, and also instruction in the fundamental laws of the United States and of this territory, in what regards the rights and duties of citizens, and to this end it shall consist of the following colleges or departments, to-wit:

1. The college or department of arts.
2. The college or department of letters.
3. The normal college or department.
4. Such professional or other colleges or departments as now are or may from time to time be added thereto or connected therewith. (*Id.* § 9.)

*§ 247. **Same.** The college or department of arts shall embrace courses of instruction in mathematical, physical, and natural sciences, with their application to the industrial arts, such as agriculture, mechanics, engineering, mining, and metallurgy, manufactures, architecture, and commerce, *in* [and] such branches included in the college of letters as shall be necessary to proper fitness of the pupils in the scientific and practical courses for their chosen pursuits, and in military tactics; in the normal department, the proper instruction and learning in the theory and art of

teaching, and in all the various branches and subjects needful to qualify for teaching in the common schools; and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be coexistent with the college of arts, and shall embrace a liberal course of instruction in language, literature, and philosophy, together with such courses, or parts of courses, in the college of arts, as the regents of the university shall prescribe. (*Id.* § 10.)

*§ 248. **Pupils, instruction, etc.** The university shall be open to female as well as to male students, under such regulations and restrictions as the board of regents may deem proper; and all able-bodied male students of the university, in whatever college, may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the territory. After any person has graduated at the university, and after such graduation has successfully taught a public school in this territory for sixteen school months, the superintendent of public instruction shall have authority to countersign the diploma of such teacher, after such examination as to moral character, learning, and ability to teach, as to said superintendent may seem proper and reasonable. Any person holding a diplona granted by the board of regents of the territorial University of North Dakota, certifying that the person holding the same is a graduate of said university, shall, after his diploma has been countersigned by the territorial superintendent of public instruction as aforesaid, be deemed qualified to teach any of the public schools of this territory, and such diploma shall be a certificate of such qualifications until annulled by the superintendent of public instruction. (*Id.* § 11.)

*§ 249. **Tuition fee.** No student who shall have been a resident of the territory for one year next preceding his admission, shall be required to pay any fees for tuition in the university, except in the law department and for extra studies. The regents may prescribe rates of tuition for any pupil in the law department, or who shall not have been a resident as aforesaid, and for teaching extra studies. (*Id.* § 12.)

*§ 250. **Appropriation.** For the support and endowment of the university there is annually and perpetually appropriated:

1. The university fund income and all other sums of money appropriated by any law to the university fund income of North Dakota.
2. The agricultural college fund income of North Dakota.
3. All such contributions as may be derived from public or private bounty.

The entire income of all said funds shall be placed at the disposal of the board of regents by transfer to the treasurer of said board, thenceforth to be distinct and independent of the accounts of the territory, and for the support of the aforesaid colleges or departments of arts, of letters, normal and such other colleges or departments as shall be established in the said university, or connected therewith; but all means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the grantor. (*Id.* § 13.)

*§ 251. **Tax.** *They* [there] shall be levied and collected annually a territorial tax of one-tenth of one mill for each dollar of the assessed valuation of the taxable property of the territory, which amount, when so levied and collected, is appropriated to said university fund income, to be used annually as a part thereof. (*Id.* § 14.)

*§ 252. **Certain sections stricken out.** The bill entitled "An act establishing a territorial university at Grand Forks, Dakota territory, known on the records as 'Council Bill No. 101,'" passed at the fifteenth session of the legislative assembly of the territory of Dakota, be, and the same is hereby, amended by striking out all of sections thirteen, fourteen, and fifteen of said bill. (*Sp. Laws* 1883, *c.* 41, § 1.)

NOTES. An act to appropriate funds for the necessary maintenance of the Territorial University of North Dakota at Grand Forks, D. T. (*Sp. Laws* 1883, *c.* 42, *p.* 377.)

An act to provide funds for the construction of a main building for the university of North Dakota. (*Sp. Laws* 1883, *c.* 43, *p.* 378.)

AGRICULTURAL COLLEGE.

*§ 253. **Where located.** Chapter 3 of the laws of eighteen hundred and eighty-one, amended to read as follows: "That an agricultural college for the territory of Dakota is hereby located and established at the city of Brookings, Brookings county. The building for said college shall be erected and constructed upon the land now owned by the territory within the limits of said city of Brookings. The purpose of said college shall be the instruction of persons, both male and female, in such branches as may be prescribed by the board of regents hereinafter provided for." (*As amended, Sess. Laws* 1883, *c.* 2, § 1.)

*§ 254. **Board of directors.** Said agricultural college shall be under the direction of the board of directors, consisting of five members, who shall be appointed by the governor, by and with the consent of the legislative council. Said directors shall hold their offices for two years, or until their successors are appointed and qualified. All vacancies shall be filled by the remaining members of the board. They shall elect a treasurer and secretary from their own number. The treasurer shall execute to the territory sufficient sureties in such sum as the board may direct. Said board of directors shall have charge of the building and repairing of the building, and have the government and control of said agricultural college. The office of regent of the college is hereby abolished, and the duties and powers of said regents shall be performed and enjoyed by the directors provided for in this act. (*As amended, Sess. Laws* 1885, *c.* 22, § 1.)

*§ 255. **Oath.** The governor shall cause to be issued to each of said regents a commission, which shall be under seal of the territory and attested by the secretary of the territory. At the first meeting of said board the members thereof shall take and subscribe an oath to support the constitution of the United States and the organic act of the territory

of Dakota, and for the faithful performance of their duties, which oath shall be filed with the secretary, and kept among the records of the board. (*As amended*, *Sess. Laws* 1883, *c*. 2, § 3.)

*§ 256. **Organization.** Said board shall meet and organize at Brookings, Dakota, on the first day of June, A. D. eighteen hundred and eighty-four, and make provision for the opening of said school. They shall have full power to employ a president, and all necessary professors and assistants, and prescribe the course of study to be pursued in all the departments of said college, the requisities to graduation and the degrees to be conferred thereupon, and to do all things necessary to the successful operation of said school. (*Id.* § 4.)

*§ 257. **Moneys, how controlled.** All money remaining in the agricultural college fund, after the construction of the building for said agricultural college, shall be under the control of the board of regents, and the territorial treasurer shall pay out of the said fund all warrants which shall have been audited by the said board of regents, and signed by the president and secretary of the same. (*Id.* § 5.)

*§ 258. **Report.** The said board of regents shall make a report to the legislature, at each session thereof, embracing a detailed statement of all their doings, which report shall be printed before or at the date of the meeting of the legislature. (*Id.* § 6.)

*§ 259. **Compensation.** The members of the board of regents shall be entitled to receive the sum of three dollars per day and all necessary traveling expenses while attending to the business of the college, which shall be in full of all compensation they shall receive, which sums shall be paid out of the territorial treasury. (*Id.* § 7.)

*§ 260. **Meetings.** Said board shall have meetings from time to time as they shall deem advisable, not less than once in each year. (*Id.* § 8.)

AGRICULTURAL COLLEGE FUND.

*§ 261. **Funds, how provided.** For the purpose of providing a fund to erect and construct an agricultural college the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue twenty-five thousand dollars of territorial bonds. Said bonds shall be dated on the day of the execution and delivery thereof, shall be due in twenty years from and after their date, and shall be payable at the option of the territory at any time after ten years from their date. Said bonds shall bear interest at the rate of five per cent. per annum, which interest shall be expressed in coupons attached to said bonds, and made payable semi-annually on the first days of July and January of each year. Said bonds shall be drawn in denominations of five hundred dollars each, and shall be numbered in the order of their issue, and shall be made payable at the office of the treasurer of the territory. Said bonds shall be executed for the territory, and under seal thereof, by the governor and treasurer, attested by the secretary, and negotiated by the treasurer. (*Sess. Laws* 1883, *c*. 3, § 1.)

*§ 262. **Fund, how designated.** Said bonds, and the money arising from the sale of the same, shall be known and designated as the "Dakota Agricultural College Fund," and shall be kept as a separate fund on the books of the treasurer. (*Id.* § 2.)

*§ 263. **Bonds, how sold.** Said bonds shall be sold in the following manner: Whenever the directors appointed to superintend the building of the agricultural college, as hereinafter provided, shall certify to the treasurer that contracts for building said agricultural college have been entered into according to the provisions of this act, it shall be the duty of the said treasurer to offer for sale, by such public advertisement as he shall deem expedient, to the person or persons paying par, or the highest primium above par, the whole amount of bonds as herein provided for. (*Id.* § 3.)

*§ 264. **Tax.** For the purpose of the prompt payment of the principal and interest of the bonds herein provided for, there shall be levied annually by the territorial board of equalization, at the time the other taxes are levied, and collected in the same manner as other territorial taxes are collected, such a tax as shall be sufficient to pay such interest and the exchange thereon; and after nine years from the date of said bonds, if no other provision shall have been made for the payment of the principal of the same, the said board of equalization, or any other officer or officers then empowered to perform the duties now performed by said territorial board of equalization, shall levy such sinking-fund tax annually as shall be sufficient to retire and pay said bonds at their maturity. It shall be the duty of the territorial treasurer to pay promptly, on the first days of July and January of each year, such interest as shall then be due on said bonds, and at the end of ten years, if a sinking-fund tax is raised as herein provided, to pay, retire, and cancel said bonds in the order of their issue with the sinking fund, as fast as the same shall be received in sufficient amounts to pay a bond. The tax and fund herein provided for, for the payment of the principal or interest of said bonds, shall not be used for any other purpose. (*Id.* § 4.)

*§ 265. **Payment of interest.** (*Id.* § 5.) Superseded by *§ 284, *post.*

*§ 266. **Directors.** That section six of chapter three of the session laws of eighteen hundred and eighty-three is hereby repealed, and the duties and powers of the directors provided for by said section shall be performed by the directors provided for by this act. (*Sess. Laws* 1885, *c.* 22, § 2.)

*§ 267. **Board of directors.** Each of said directors, before entering upon the duties of his office, shall give a bond to the territory of Dakota, with sufficient sureties, conditioned upon the faithful performance of his duties, in the penal sum of ten thousand dollars each. Said bond shall be approved by the territorial treasurer and put on file in his office. (*Sess. Laws* 1883, *c.* 3, § 7.)

*§ 268. **Duty of directors in letting contract.** Said directors shall, within thirty days after their appointment, notice of which

shall be given them in writing by the governor, take steps to secure a contract for the erection and construction of a suitable building for an agricultural college, to be erected and constructed upon the land belonging to the territory adjacent to the village of Brookings, Dakota, and for that purpose shall advertise for a period of thirty days, in such papers as they shall deem best, for plans and specifications for said college building, which plans and specifications may or may not be accompanied by the price for which the person furnishing the same will perform the work and build said building, but such plans and specifications so furnished shall be without cost to the territory. From the plans and specifications so furnished, or from any other plans and specifications, the said directors shall, within ten days after the expiration of the time of advertising for said plans and specifications as hereinbefore provided, select a plan for an agricultural college building. Immediately after said plan shall have been selected, the same, together with the specifications accompanying it, shall be placed on file in the office of the treasurer of the territory, and be open to inspection for a period of thirty days from the date of filing the same, and during said times bids shall be received from persons desiring to contract for the erection and construction of said building as per the plans and specifications selected by said directors. On the day following the expiration of said time for filing said plans and specifications, the directors shall, in a public manner, open said bids, and, within three days thereafter, award the contract to the lowest responsible bidder: *provided, however*, that the directors shall have the right to reject any or all bids, and again advertise for bids as herein provided. (*Id.* § 8.)

*§ 269. **Total cost.** The total cost of said agricultural college building, including fixtures, shall not exceed twenty thousand dollars. (*Id.* § 9.)

*§ 270. **Bond of contractor.** The person to whom the contract for the erection and construction of said agricultural college building is awarded, shall, before entering upon the work, give a bond to the territory, with sufficient sureties to be approved by the directors, conditioned for the faithful performance of the contract, in the sum of twenty thousand dollars. (*Id.* § 10.)

*§ 271. **Building—material.** The walls of the said agricultural college building shall be constructed of good brick or stone, and said building shall be as nearly fire-proof as practicable. The material used in said building shall be examined by the directors, and they shall reject all material which they deem unsuitable. (*Id.* § 11.)

*§ 272. **Contract, what to provide.** The contract for the erection and construction of said agricultural college building shall provide that all material shall be of good quality, that the work shall be performed in a good, workmanlike manner, and that said building shall be all inclosed on or before the first day of November, A. D. eighteen hundred and eighty-three, and shall be all completed and ready for acceptance on or before the first day of July, A. D. eighteen hundred and eighty-four. (*Id.* § 12.)

*§ 273. **Acceptance of building.** When the work is all done on said agricultural college building, the directors, together with the governor and territorial auditor, shall constitute a committee to accept said work, and discharge the contractor from further obligation or liability therefor. Said committee, upon receiving written notice from the contractor that said work is all done, shall at once proceed to an examination of and accept or reject the same. (*Id.* § 13.)

*§ 274. **Partial payments.** After one-fourth of the work provided for in the contract shall have been completed, and on application of the contractor, the directors shall certify to the auditor of the territory the value of the work done on the building at the time, and on such certificate the auditor shall issue a warrant on the treasurer for a sum not exceeding sixty per cent. of the value of the work so certified to have been done, which warrant shall be paid out of the agricultural college fund. (*Id.* § 14.)

*§ 275. **Contractor, how paid.** Upon completion of the work, and acceptance of the same as hereinbefore provided, the balance due the contractor under his contract shall be paid by warrant drawn by the territorial auditor on the territorial treasurer, upon certificate of the directors, as provided in cases of the payments mentioned in section fourteen of this act, which warrant shall also be paid out of the agricultural college fund. (*Id.* § 15.)

*§ 276. **Report of directors.** After the completion of said agricultural college building, and the acceptance of the same as hereinbefore provided, the directors shall make a full and complete report of their work to the governor, which shall be by him communicated to the legislature at its next session, with his recommendation, which report may be adopted or rejected by the said legislature, and until said report is adopted by the legislature the directors shall not be discharged from liability on their bonds. (*Id.* § 16.)

*§ 277. **Compensation of directors.** The said directors shall receive five dollars per day for every day they may be actually employed about the erection of said building, and in addition thereto shall be allowed traveling expenses not to exceed ten cents per mile for each and every mile actually and necessarily traveled in the discharge of their duties: *provided, however*, that but one of said directors shall be paid for attendance during the progress of the work, except when meetings are held for conference. Each director shall render to the territorial auditor a sworn account of the amount due him, and the said sum shall then be paid out of the agricultural college fund on the warrant of the auditor. (*Id.* § 17.)

*§ 278. **Debts, in case of territorial division.** That part of the territory of Dakota in which the agricultural college is situated, shall, on the division of the territory, assume all debts incurred and then existing on account of the erection, construction, and equipment of said agricultural college and agricultural college farm. (*Id.* § 18.)

FUNDS, HOW PROVIDED.

*§ 279. **Bonds to be issued.** For the purpose of providing funds to finish the agricultural college at Brookings, Dakota, and build a boarding-house, and furnish the same, and put in steam-heating, the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue twenty thousand dollars of territorial bonds. (*Sess. Laws* 1885, *c.* 22, § 3.)

*§ 280. **Bonds, issuance and negotiation of.** Said bonds shall be dated on the day of the execution and delivery thereof, shall be due in twenty years from and after their date, and shall be payable at the option of the territory at any time after ten years from their date. Said bonds shall bear interest at the rate of six per cent. per annum, which interest shall be expressed by coupons attached to said bonds, and be made payable semi-annually on the first day of January and July of each year. Said bonds shall be drawn in denominations of five hundred dollars each, and shall be numbered in the order of their issue, and shall be made payable at the Chemical National Bank of the city of New York. Said bonds shall be executed for the territory, under the seal thereof, by the governor and the treasurer, attested by the secretary, and negotiated by the treasurer. (*Id.* § 4.)

*§ 281. **Bonds, how designated.** Said bonds, and the money arising from the sale of the same, shall be known and designated as the "Brookings Agricultural College Fund," and shall be kept as a separate fund on the books of the treasurer. (*Id.* § 5.)

*§ 282. **When to be sold.** Said bonds shall be sold by the treasurer, whenever the directors herein provided for shall request him to do so, and the treasurer shall offer said bonds for sale, by such public advertisement as he may deem expedient, at such price, not less than par, as he shall be able to obtain for the same. (*Id.* § 6.)

*§ 283. **Annual tax levy.** For the purpose of the prompt payment of the principal and interest of the bonds herein provided for, there shall be levied annually by the territorial board of equalization, at the time other taxes are levied, and collected in the same manner as the other territorial taxes are collected, such a tax as shall be sufficient to pay such interest, and the exchange thereon; and after nine years from the date of said bonds, if no other provisions shall have been made for the payment of the principal of the same, the board of equalization, or any other officer or officers then empowered to perform the duties now performed by the territorial board of equalization, shall levy such sinking-fund tax annually as shall be sufficient to retire and pay said bonds at their maturity. It shall be the duty of the territorial treasurer to pay promptly, on the first day of July and January of each year, such interest as shall be due on said bonds, and at the end of twenty years, if a sinking-fund tax is raised as herein provided, to pay, retire, and cancel said bonds in the order of their issue, with the sinking fund, as fast as the same shall be received in sufficient amounts to pay a bond. The

tax and fund herein provided for, for the payment of the principal or interest of said bonds, shall not be used for any other purpose. (*Id.* § 7.)

*§ 284. **Payment of interest.** If at any time the territorial treasurer shall not have in his hands sufficient funds as hereinafter provided to pay the interest on said bonds when the same is due, he shall pay such interest out of any funds in the territorial treasury not otherwise appropriated, and all money belonging to the general territorial fund, applied by the said treasurer to the payment of such interest on said bonds, shall be replaced from time to time by special tax levied to pay the same. (*Id.* § 8.)

*§ 285. **Appropriations.** There is hereby appropriated out of the territorial treasury all the funds realized by the sale of the bonds provided for in this act, for the following purposes: For furnishing the agricultural college at Brookings, Dakota, eight thousand dollars; for steam-heating appliances, two thousand dollars; for furnishing, two thousand dollars; for farm additions and improvements, eight hundred dollars; for dormitory and boarding-house, six thousand dollars; for furnishing the same, twelve hundred dollars; and it shall be the duty of the auditor of the territory, upon the application of the board of directors, or a majority thereof, to draw on the territorial treasurer for the purpose of carrying out the provisions of this act. (*Id.* § 9.)

NOTE. Special Act—Printing reports of agricultural college at Brookings. (*Joint Res. Sess. Laws* 1885, *c.* 5, § 1.)

AGRICULTURAL COLLEGE—NORTH DAKOTA.

*§ 286. **Established at Fargo.** That an agricultural college, to be called and known as the "North Dakota Agricultural College," for the territory of Dakota, be, and is hereby, established at Fargo, Cass county, Dakota, the exclusive purpose of which shall be the instruction of persons, both male and female, in such branches as may be prescribed by the board of education herein provided for: *provided*, that a tract of land not less than forty acres, adjacent to said city of Fargo, be secured and donated to the territory of Dakota, in fee-simple, as a site for a college, within one year from the taking effect of this act, and the governor of the territory of Dakota is hereby empowered, and it is made his duty, to see that a good and sufficient deed be made to the same. (*Sess. Laws* 1883, *c.* 4, § 1.)

*§ 287. **Trustees, how appointed.** The said agricultural college shall be under the direction of a board of trustees consisting of five members, four of whom shall be appointed by the governor, and the fifth member shall be superintendent of public instruction, who shall be *ex officio* president of said board. The other four members shall hold their office for one, two, three, and four years, respectively, as by the governor designated at the time of appointment. The board shall select a treasurer and secretary from their number, and the treasurer shall execute to the territory a bond with sufficient securities in such sum as the board may direct. (*Id.* § 2.)

*§ 288. **Meetings.** Said board shall have meetings from time to time as they may deem advisable, not less than once every year, and they shall have power to direct the management of said college in all its departments, to employ teachers, and make such rules and regulations as they shall deem necessary; to prescribe a course of study, including a normal department, the requisite to graduation, and the degree to be conferred thereupon. (*Id.* § 3.)

*§ 289. **Control of funds.** All funds appropriated for the use and benefit of said college shall be under the direction and control of the board of trustees, and the treasurer of the territory shall pay out of the said agricultural college fund all orders or drafts which shall have been authorized by the board, and audited by the president and secretary of the same. Said orders shall be certified to the territorial auditor, as herein provided, and he shall draw his warrant upon the territorial treasurer for the payment of the same. (*Id.* § 4.)

*§ 290. **Report of trustees.** The board of trustees shall render to the legislature, at each session thereof, a full and complete report of its operations, which report shall be prepared and printed before or at the date of the meeting of the legislature. (*Id.* § 5.)

*§ 291. **Compensation.** The members of the board of trustees shall be entitled to receive the sum of three dollars per day and all necessary traveling expenses while attending to the business of the college, which shall be in full of all compensation which they shall receive, and said accounts shall be audited by the board and paid out of the said agricultural college fund. (*Id.* § 6.)

*§ 292. **Statute revived.** Chapter four of the session laws of eighteen hundred and eighty-three, of the territory of Dakota, entitled "An act to locate and establish the North Dakota Territorial Agricultural College," be, and the same is hereby, revived, re-enacted, and continued in force. (*Sess. Laws* 1885, *c.* 4, § 1.)

*§ 293. **Donation of land.** The time provided in section one of said act for donating and securing to the territory the land mentioned in section one of said act is hereby extended for one year from the taking effect of this act. (*Id.* § 2.)

NORMAL SCHOOL AT MADISON.

*§ 294. **Normal school located at Madison — purpose — proviso.** That a normal school for the territory of Dakota be established at Madison, in Lake county, Dakota territory, the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching, and in all the various branches that pertain to a good common-school education; also to give instruction in the mechanical arts, and in husbandry, and in agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens: *provided*, that a tract of land, not less than one hundred and sixty acres, within one mile from the corporate limits of the town of

Madison, aforesaid, be donated and secured to the territory of Dakota, in fee-simple, as a site for said normal school, within six months after the passage and approval of this act; and the governor of the territory is hereby empowered, and it is made his duty, to see that a good and sufficient deed be made to the territory for the same. (*Sess. Laws* 1881, *c.* 99, § 1.)

*§ 295. **Supervision.** Said normal school shall be under the direction of a board of education, and shall be governed and supported as hereinafter provided. (*Id.* § 2.)

*§ 296. **Board to erect building, etc.** The said board of education are hereby authorized, and it is made a part of their duty, to immediately commence the erection and construction of a suitable building for said normal school upon the grounds specified in this act, as a site for the same, as soon as a sufficient appropriation is secured for the erection thereof. They shall have the power to let contracts for the building and completing of said normal-school building, and shall have the entire supervision of its construction, providing that all contracts let for the erection and completion of said institution shall be let to the lowest responsible bidder, after notice of the letting of said contract shall have been published in at least four of the leading newspapers, located in different parts of the territory, for at least thirty days before the letting of said contract, and the said board shall have the power to reject any or all bids. It is also the duty of said board of education, and they are hereby empowered, to make the selection of said site for said normal school. (*Id.* § 3.)

*§ 297. (§ 4.) **Number of board and terms of office—reports.** Repealed. (*Sess. Laws* 1885, *c.* 116, § 1.)

*§ 298. **Board of education of normal school.** The board of education for the normal school for Dakota territory, located and established at Madison, Lake county, Dakota territory, shall consist of five members, who shall be appointed by the governor, and by and with the consent of the legislative council. Two of said members of the board shall hold their office for the term of two years, and three for the term of four years. The territorial treasurer, by virtue of his office, shall be treasurer of said board, and the board shall annually elect from their number a president and secretary. It shall be the duty of the secretary to keep an exact detailed account of the doings of said board, and he shall submit such reports to the legislature as are required by this act; and no member of said board of education shall, during his continuance in office as a member of said board, act as an agent of any publishers of school books, and school-library books, either directly or indirectly; and the governor of the territory is hereby authorized and required, upon satisfactory evidence being produced to him that any member of said board is employed as such agent, or interested as aforesaid, to remove such member of said board from office, and to appoint another in his place to fill such vacancy. (*Id.* § 2.)

§ 299. **Powers of board to appoint and remove.** Said board shall have power to appoint a principal and assistant to take charge of said school, and such other teachers and officers as may be required in said school, and fix the salary of each and prescribe their several duties. They shall also have power to remove either the principal, assistant, or teachers, and appoint others in their stead. They shall prescribe the various books to be used in said school, and make all regulations and by-laws necessary for the good government and management of the same. (*Sess. Laws* 1881, *c.* 98, § 5.)

§ 300. **Notice when school is ready for pupils.** As soon as said normal school is prepared to receive pupils, the superintendent of public instruction shall give notice of the fact to each county clerk in the territory, and shall publish said notice in a newspaper published in each judicial district. (*Id.* § 6.)

*§ 301. **Applications for admission.** The board of education shall ordain such rules and regulations for the admission of pupils to said school as they shall deem necessary and proper. Every applicant for admission shall undergo an examination in such manner as shall be prescribed by the board, and if it shall appear that the applicant is not a person of good moral character, [or] will not make an apt and good teacher, such applicant shall be rejected. The board of education may, in their discretion, require any applicant for admission into said school, prior to such admission, [to] sign and file with said board a declaration of intention to follow the business of teaching schools in this territory, to pay, or secure to be paid, such fees for tuition as to said board shall seem reasonable. (*Id.* § 7.)

*§ 302. **Conditions of admission to school.** Any person may be admitted as a pupil of said normal school who shall pass a satisfactory examination: *provided*, that the applicant shall, before admission, sign a declaration of intention to follow the business of teaching schools in this territory: *and provided, further*, that the pupil may be admitted without signing such declaration of intention, on such terms as the normal-school board may require or prescribe; and each county shall be entitled to send pupils in ratio to their representation in the legislature to which it may be entitled, not to exceed such number as the board may prescribe. (*Id.* § 8.)

*§ 303. **Visiting school by committee.** After said normal school shall have commenced its first term, and at least once in each year thereafter, it shall be visited by three suitable persons, not members, to be appointed by the board of education, who shall examine thoroughly into the affairs of the school, and report to [the] superintendent of public instruction or auditor their views in regard to its condition, success, and usefulness, and any other matter they may judge expedient. Such visitors shall be appointed annually. (*Id.* § 9.)

*§ 304. **Lectures** Lectures in chemistry, comparative anatomy, the mechanical arts, agricultural chemistry, and any other science or any other branches of literature that the board of education may direct

may be delivered to those attending such school, in such manner and on such terms and conditions as the board of education may prescribe. (*Id.* § 10.)

*§ 305. **Certificate to qualified pupil.** As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies required by the board in such manner as may be required by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate which shall entitle the holder to teach a common school in any county in the territory, for the time and in the branches stated in said certificate. (*Id.* § 11.)

*§ 306. **School funds, how disbursed.** All funds appropriated for the use and benefit of said normal school shall be under the direction and control of the board of education, subject to the provisions herein contained. The treasurer of the territory shall pay out of such funds all orders or drafts for money to be expended under the provisions of this act; such orders or drafts to be drawn by the territorial auditor, on certificate of the secretary, countersigned by the president of the board. No such certificate shall be given except upon accounts audited and allowed by the board at their regular meetings. (*Id.* § 12.)

*§ 307. **Payment of salaries, etc.** Services and all other necessary traveling expenses, as hereinafter provided, incurred by the board of education in carrying out the provisions of this act, shall be paid on the proper certificate out of any funds belonging to said institution in the hands of the treasurer. Until the erection and completion of the necessary buildings, the principal, assistants, teachers, board of education, and other officers employed in said school, shall be paid out of the normal-school fund, and from the receipts for tuition after the erection of the necessary buildings. The members of the board of education shall be entitled to three dollars per day and ten cents per mile actually and necessarily traveled in attending the meetings of the board. (*Id.* § 13.)

*§ 308. **School lands to be selected and sold.** For the purpose of erecting said normal-school building, the governor, secretary of state or territory, and auditor, shall, within six months after the admission of Dakota as a state, or as soon thereafter as the government shall cede to the state of Dakota the school lands lying within her border, set apart for the erection of said normal-school building twenty sections of land belonging to the state of Dakota, which lands shall be selected from any lands not otherwise appropriated; and the governor, secretary of state, and auditor, may, at their discretion, after advertising four months in at least four newspapers published in the state, sell said lands to the highest bidder at public sale; said lands to be sold in quantities not exceeding one hundred and sixty acres to any one person at one bid: *provided, however*, that no part of said land shall be sold for less than three dollars per acre. (*Id.* § 14.)

*§ 309. **Disposition of funds arising from sale.** The proceeds of said sale shall be deposited with the treasurer as a normal-school

fund, and shall be drawn therefrom upon the warrant of the auditor, to be issued in pursuance of a certificate of the board of education, signed by their president and countersigned by the secretary; that the money is due and payable to the principal of the normal school, or his assistants, or the teachers or officers employed, or the members of the board of education, as herein authorized, or for necessary incidental expenses in the support and maintenance of said school, or for the erection and completion of the normal-school building. (*Id.* § 15.)

*§ 310. **Vacancies.** It shall be the duty of the governor to fill by appointment all vacancies that may occur in said board of said school from neglect of duty. (*Id.* § 16.)

*§ 311. **Adjournment of sale of lands.** The governor, secretary of state, and auditor may adjourn the sale of said lands from time to time as they may deem necessary: *provided*, that such adjournment shall in no case extend beyond a period of one year from the day first appointed for said sale. (*Id.* § 17.)

*§ 312. **Meetings of the board.** The board of education shall hold regular meetings in each year, to-wit, during the first week in June and the first week in January in each year, at which first meeting the officers of the board shall be elected. All meetings of the board shall, when practicable, be in the normal-school building, and all financial matters, allowances, claims, and accounts shall be disposed of at such regular meetings only. Special meetings of the board may be called upon written order of the president of the same, which shall specify the object of the meeting. An adjournment may be had from a regular or special meeting, but the adjournment must in either case state the reason in full of the same. A majority of the board shall constitute a quorum to transact business. A true and faithful journal of their proceedings shall be kept, subject at any time to the inspection of any member of the board. (*Id.* § 18.)

*§ 313. **Report of the board.** The clerk of the board of education shall, on the first day of January of each year, transmit to the governor a full report of the expenditures of the same for the previous year, setting forth in full each item and the date thereof. (*Id.* § 19.)

*§ 314. **No religious tests required.** The board of education in their regulations, and the principal in his supervision and government of the schools, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance at said school; but no religious or sectarian tests shall be applied in the selection of teachers, and none be adopted in the school. (*Id.* § 20.)

*§ 315. **Payment of expenses of sale of lands.** All necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale, by a warrant drawn by the auditor upon the state treasurer: *provided*, that all accounts for expenses above specified shall first be approved by the superintendent of public instruction. (*Id.* § 21.)

FUNDS TO COMPLETE NORMAL SCHOOL.

*§ 316. **Funds to complete school.** For the purpose of providing a fund to complete a normal school, the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue thirteen thousand and six hundred dollars of territorial bonds,—ten thousand dollars to be used for completing the building; sixteen hundred dollars for steam-heating apparatus; two thousand dollars for school furniture, including model. Said bonds shall be dated on the day of execution and delivery thereof; shall be due in twenty years from and after their date; and shall be payable at the option of the territory at any time after ten years from their date. Said bonds shall draw interest at the rate of six per cent. per annum, which interest shall be expressed in coupons attached to said bonds, and be made payable semi-annually on the first days of July and January of each year. Said bonds shall be drawn in denominations of five hundred dollars each, and shall be numbered in the order of their issue, and shall be made payable at the office of the treasurer of the territory. Said bonds shall be executed for the territory, and under seal thereof, by the governor and treasurer, attested by the secretary, and negotiated by the treasurer. (*Sess. Laws* 1885, *c.* 25, § 1.)

*§ 317. **Fund, how designated.** Said bonds, and the money arising from the sale of the same, shall be known and designated as the "Madison Normal School Fund," and shall be kept as a separate fund on the books of the treasurer. (*Id.* § 2.)

*§ 318. **Bonds, how sold.** Said bonds shall be sold in the following manner: Whenever the directors appointed to superintend the completion of said normal school, as hereinafter provided, shall certify to the treasurer that contracts for the completion of said normal school have been entered into, according to provisions of this act, it shall be the duty of the said treasurer to offer for sale, by such public advertisements as he shall deem expedient, to the person or persons paying par, or the highest premium above par, the whole amount of bonds as herein provided for. (*Id.* § 3.)

*§ 319. **Tax.** For the purpose of the prompt payment of the principal and interest of the bonds herein provided for, there shall be levied annually, by the territorial board of equalization, at the time the other taxes are levied and collected, in the same manner other territorial taxes are collected, such a tax as shall be sufficient to pay such interest, and the exchange thereon, and after *nineteen* [nine] years from the date of said bonds, if no other provision shall have been made for the payment of the principal of the same, the said board of equalization, or any other officer empowered to perform the duties now performed by said territorial board of equalization, shall levy such sinking-fund tax, annually, as shall be sufficient to retire and pay such bonds at their maturity. It shall be the duty of the territorial treasurer to pay promptly, on the first day of July and January of each year, such interest as shall then be due on said bonds, and at the end of twenty years, if a sinking-fund tax

is raised as herein provided, to pay, retire, and cancel said bonds in the order of their issue, with the sinking fund, as fast as the same shall be received in sufficient amounts to pay a bond. The tax and fund herein provided for, for the payment of the principal or interest of said bonds, shall not be used for any other purpose. (*Id.* § 4.)

*§ 320. **Payment of interest.** If at any time the territorial treasurer shall not have in his hands sufficient funds, as hereinbefore provided, to pay the interest on said bonds when the same is due, he shall pay such interest out of any funds in the territorial treasury not otherwise appropriated; and all money belonging to the general territorial fund, applied by the said treasurer to the payment of such interest on said bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 5.)

*§ 321. **Payment in case of division of territory.** In case of a division of territory, that part of the territory of Dakota in which said normal school is located, shall, on the division of the territory, assume and pay all bonds and coupons issued, existing on account of the construction of said normal-school building. (*Id.* § 6.)

NORMAL SCHOOL AT SPEARFISH.

*§ 322. **Normal school established at Spearfish—its design—proviso.** That a normal school for the territory of Dakota be established at Spearfish, in Lawrence county, territory of Dakota, the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching, and in all the various branches that pertain to a good common-school education; also to give instruction in the mechanical arts, and in husbandry and agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens: *provided*, that a tract of land, not less than forty acres, adjacent to said town of Spearfish be donated and secured to the territory of Dakota, in fee-simple, as a site for said normal school, within six months from the taking effect of this act; and the governor of the territory is hereby empowered, and it is made his duty, to see that a good and sufficient deed, so far as can be, be made to the territory for the same. (*Sess. Laws* 1881, *c.* 100, § 1.)

*§ 323. **Supervision.** The said normal school shall be under the direction of a board of education, and shall be governed and supported as hereinafter provided. (*Id.* § 2.)

*§ 324. **Board to erect building, etc.** The board of education are hereby authorized, and it is made their duty, to immediately commence the erection and construction of a suitable building for said normal school, upon the ground specified in this act as a site for the same, as soon as sufficient appropriation is secured for the erection thereof. They shall have the power to let contracts for the building and completion of said normal-school building, and shall have the entire supervision of its construction: *provided*, that all contracts connected with the erection of

said building shall be let to the lowest responsible bidder, after notices of the letting of such contracts shall have been published in two of the leading newspapers located in the western part of the territory, for at least thirty days before the letting of said contracts, and the board shall have the power to reject any or all bids. (*Id.* § 3.)

*§ 325. **Number of board and terms of office—reports, etc.** Said board of education shall consist of five members, three of whom shall be appointed by the governor, and by and with the consent of the legislative council,—one of whom shall hold his office for six years, another for four years, another for two years. The governor shall designate which person shall hold his office for six years, which for four years, and which for two years. The territorial treasurer and superintendent of public instruction shall, by virtue of their offices, be members of said board. The territorial treasurer, by virtue of his office, shall be treasurer of said board, and the members thereof shall annually elect from their number a president and secretary. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, and he shall make such reports to the legislature as are required by this act. (*Id.* § 4.)

*§ 326. **Powers of board to appoint and remove.** Said board of education shall have power to appoint a principal and assistant to take charge of said school, and such other teachers and officers as may be required in said school, and fix the salary of each, and prescribe their several duties. They shall also have power to remove either the principal, assistant, or teachers, and appoint others in their stead. They shall prescribe the various books to be used in said school, and shall make all the regulations and by-laws necessary for the good government and management of the same. (*Id.* § 5.)

*§ 327. **Notice when school is ready for pupils.** As soon as said normal school is prepared to receive pupils, the superintendent of public instruction shall give notice of the fact to each county clerk in the territory, and shall publish said notice in a newspaper published in each judicial district. (*Id.* § 6.)

*§ 328. **Applications for admission.** The said board of education shall ordain such rules and regulations for the admission of pupils to said school as they shall deem necessary and proper. Every applicant for admission shall undergo an examination in such manner as shall be prescribed by the board, and the board may, in their discretion, require an applicant for admission into said school, other than such as shall, prior to such admission, sign and file with said board a declaration of intention to follow the business of teaching schools in this territory, to pay, or secure to be paid, such fees or tuition as to said board shall seem reasonable. (*Id.* § 7.)

*§ 329. **Visitations.** After said normal school shall have commenced its first term, and at least once in each year thereafter, it shall be visited by three suitable persons, not members, to be appointed by the board of education, who shall examine thoroughly into the affairs of the

school, and report to the superintendent of public instruction or auditor their views in regard to its condition, success, and usefulness, and any other matters they may judge expedient. Such visitors shall be appointed annually. (*Id.* § 8.)

*§ 330. **Certificate to qualified pupil.** As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies required by the board in such manner as may be prescribed by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate which shall entitle the holder to teach a common school in any county in the territory for the time and in the branches stated in said certificate. (*Id.* § 9.)

*§ 331. **School funds, how disbursed.** All funds appropriated for the use and benefit of said normal school shall be under the direction and control of the board of education, subject to the provisions herein contained. The treasurer of the territory shall pay out of such funds all orders or drafts for money to be expended under the provisions of this act; such orders or drafts to be drawn by the territorial auditor, on certificates of the secretary, countersigned by the president of the board. No such certificates shall be given except upon accounts audited and allowed by the board at their regular meetings. (*Id.* § 10.)

*§ 332. **Payment of expenses—salaries, etc.** Services and all other necessary traveling expenses, as hereinafter provided, incurred by members of the board of education in carrying out the provisions of this act, shall be paid on the proper certificate out of any funds belonging to said institution in the hands of the treasurer, until the erection and completion of the necessary buildings. The principal, assistants, teachers, board of education, and other officers employed in said school, shall be paid out of the normal-school fund, and from receipts for tuition after the erection of the necessary buildings. The members of the board of education shall be entitled to three dollars per day, and ten cents per mile actually and necessarily traveled in attending meetings of the board. (*Id.* § 11.)

*§ 333. **School lands to be selected and sold.** For the purpose of erecting said normal-school building, the governor, secretary of state, and auditor shall, within six months after the admission of Dakota as a state, or as soon thereafter as the government shall cede to the state of Dakota the school lands lying within her border, set apart for the erection of said normal-school building twenty sections of land belonging to the state, which lands shall be selected from any lands not otherwise appropriated; and the governor, secretary of state, and auditor may, at their discretion, after advertising three months in at least four newspapers published in the state, sell said lands to the highest bidder at public sale; said lands to be sold in quantities not exceeding one hundred and sixty acres to any one person at one bid: *provided, however*, that no part of said land shall be sold for less than three dollars per acre. (*Id.* § 12.)

*§ 334. **Funds arising from salè, how disposed of.** The proceeds of said sale shall be deposited with the treasurer as a normal-school fund, and shall be drawn therefrom upon a warrant of the auditor, to be issued in pursuance of a certificate of the board of education, signed by their president and countersigned by the secretary, that the money is due and payable to the principal of the normal school, or his assistants, or the teachers or officers employed, or members of the board of education, as herein authorized, or for necessary incidental expenses in the support and maintenance of said school, or the erection and completion of the normal-school building. (*Id.* § 13.)

*§ 335. **Vacancies.** It shall be the duty of the governor to fill by appointment all vacancies that may from any cause occur in the board of education of the territorial normal school, and he may, for neglect of duty, or any violation of the trust reposed, or the arbitrary exercise of the power conferred, remove any member of said board and appoint a suitable person in his stead. (*Id.* § 14.)

*§ 336. **Adjourning sale.** The governor, secretary of state, and auditor may adjourn the sale of said lands from time to time as they may deem necessary: *provided*, that such adjournment shall in no case extend beyond a period of one year from the day first appointed for the sale of said land. (*Id.* § 15.)

*§ 337. **Meetings of the board.** The board of education shall hold regular meetings in each year, to-wit: During the first week in June and the first week in January in each year, at which first meeting the officers of the board shall be elected. Special meetings of the board may be called upon the written order of the president of the same, which shall specify the object of the meeting. All financial matters, allowances, claims, and accounts shall be disposed of at such board meetings only. A majority of the board shall constitute a quorum to transact business. A true and faithful journal of their proceedings shall be kept, subject at any reasonable time to the inspection of any member of the board. (*Id.* § 16.)

*§ 338. **Report of the board.** The clerk of the board of education shall, on the first day of January of each year, transmit to the governor a full report of the expenditures of the same for the previous year, setting forth in full each item, and the date thereof. (*Id.* § 17.)

*§ 339. **No religious test to govern.** The board of education in their regulations, and the principal in his supervision and government of the school, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance on the same, but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in the school. (*Id.* § 18.)

*§ 340. **Incidental expenses of sale, how paid.** That all necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale, by a warrant drawn by the auditor upon the state treasurer: *provided*, that all amounts for ex-

penses above specified shall be first approved by the superintendent of public instruction. (*Id.* § 19.)

NOTE.—Special Act—Appropriation for normal school at Spearfish. (*Sp. Laws* 1885, *c.* 15, § 1.)

NORMAL SCHOOL AT SPRINGFIELD.

*§ 341. **Location of normal school at Springfield—its object—proviso.** That a normal school for the territory of Dakota be established at Springfield, in Bon Homme county, territory of Dakota, the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching, and in all the various branches that pertain to a good common-school education; also to give instruction in the mechanical arts, and in husbandry and agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens: *provided*, that a tract of land, not less than eighty acres, adjacent to said town of Springfield, be donated and secured to the territory of Dakota, in fee-simple, as a site for said normal school, within six months from the taking effect of this act; and the governor of the territory is hereby empowered, and it is made his duty, to see that a good and sufficient deed be made to the territory for the same. (*Sess. Laws* 1881, *c.* 101, § 1.)

*§ 342. **Supervision.** The said normal school shall be under the direction of a board of education, and shall be governed and supported as hereinafter provided. (*Id.* § 2.)

*§ 343. **Board to erect building, etc.** The board of education are hereby authorized, and it is made their duty, to immediately commence the erection and construction of a suitable building for said normal school upon the ground specified in this act as a site for the same, as soon as sufficient appropriation is secured for the erection thereof. They shall have the power to let contracts for the building and completion of said normal-school building, and shall have the entire supervision of its construction: *provided*, that all contracts connected with the erection of said building shall be let to the lowest responsible bidder, after notices of the letting of such contracts shall have been published in at least four of the leading newspapers, located in different parts of the territory, for at least thirty days before the letting of said contracts, and the board shall have the power to reject any or all bids. (*Id.* § 3.)

*§ 344. **Number of board and terms of office—reports, etc.** Said board of education shall consist of five members, three of whom shall be appointed by the governor, and by and with the consent of the legislative council; one of whom shall hold his office for six years, another for four years, another for two years. The governor shall designate which person shall hold his office for six years, which for four years, and which for two years. The territorial treasurer and superintendent of public instruction shall, by virtue of their offices, be members of said board. The territorial treasurer, by virtue of his office, shall be treasurer of said board, and the members thereof shall annually elect from their number a president and secretary. It shall be the duty of the sec-

retary to keep an exact and detailed account of the doings of said board, and he shall make such reports to the legislature as are required by this act; and no member of said board of education shall, during his continuance in office as a member of said board, act as agent of any publisher or publishers of school books or school-library books, or be or become interested in the publication or sale of such books, as agent or otherwise; and the governor of this territory is hereby authorized and required, upon satisfactory evidence being produced to him that any member of said board is employed as such agent, or is interested as aforesaid, to remove such member of said board from office, and appoint another in his place to fill such vacancy. (*Id.* § 4.)

*§ 345. **Powers of board to appoint and remove.** Said board of education shall have power to appoint a principal and assistant to take charge of said school, and such other teachers and officers as may be required is said school, and fix the salary of each, and precribe their several duties. They shall also have power to remove either the principal, assistant, or teachers, and appoint others in their stead. They shall prescribe the various books to be used in said school, and shall make all the regulations and by-laws necessary for the good government and management of the same. (*Id.* § 5.)

*§ 346. **Notice when school is ready for pupils.** As soon as said normal school is prepared to receive pupils, the superintendent of public instruction shall give notice of the fact to each county clerk in the territory, and shall publish said notice in a newspaper published in each judicial district. (*Id.* § 6.)

*§ 347. **Applications for admission.** The said board of education shall ordain such rules and regulations for the admission of pupils to said school as they shall deem necessary and proper. Every applicant for admission shall undergo an examination in such manner as shall be prescribed by the board, and if it shall appear that the applicant is not a person of good moral character, or will not make an apt and good teacher, such applicant shall be rejected. The board of education may, in their discretion, require an applicant for admission into said school, other than such as shall, prior to such admission, sign and file with said board a declaration of intention to follow the business of teaching schools in this territory, to pay or secure to be paid such fees or tuition as to said board shall seem reasonable. (*Id.* § 7.)

*§ 348. **Conditions of admission to school.** Any person may be admitted as a pupil of said normal school who shall pass a satisfactory examination: *provided*, that the applicant shall, before admission, sign a declaration of intention to follow the business of teaching schools in this territory; *and provided further*, that the pupils may be admitted without signing such declaration of intention, on such terms as the normal-school board may require or prescribe; and each county shall be entitled to send pupils in the ratio of their representation in the legislature to which it may be entitled, not to exceed such number as the board may prescribe. (*Id.* § 8.)

*§ 349. **Visiting school by committee.** After said normal school shall have commenced its first term, and at least once in each year thereafter, it shall be visited by three suitable persons, not members, to be appointed by the board of education, who shall examine thoroughly into the affairs of the school, and report to the superintendent of public instruction or auditor their views in regard to its condition, success, and usefulness, and any other matter they may judge expedient. Such visitors shall be appointed annually. (*Id.* § 9.)

*§ 350. **Lectures.** Lectures in chemistry, comparative anatomy, the mechanical arts, agricultural chemistry, and any other science or any other branches of literature that the board of education may direct, may be delivered to those attending such school, in such manner and on such terms and conditions as the board of education may prescribe. (*Id.* § 10.)

*§ 351. **Certificate to qualified pupil.** As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies required by the board in such manner as may be prescribed by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate which shall entitle the holder to teach a common school in any county in the territory, for the time and in the branches stated in said certificate. (*Id.* § 11.)

*§ 352. **School funds, how disbursed.** All funds appropriated for the use and benefit of said normal school shall be under the direction and control of the board of education, subject to the provisions herein contained. The treasurer of the territory shall pay out of such funds all orders or drafts for money to be expended under the provisions of this act; such orders or drafts to be drawn by the territorial auditor, on certificate of the secretary, countersigned by the president of the board. No such certificate shall be given except upon accounts audited and allowed by the board at their regular meetings. (*Id.* § 12.)

*§ 353. **Payment of salaries, etc.** Services and all other necessary traveling expenses, as hereinafter provided, incurred by the board of education in carrying out the provisions of this act, shall be paid on the proper certificate out of any funds belonging to said institution in the hands of the treasurer. Until the erection and completion of the necessary buildings, the principal, assistants, teachers, board of education, and other officers employed in said school, shall be paid out of the normal-school fund, and from the receipts for tuition after the erection of the necessary buildings. The members of the board of education shall be entitled to three dollars per day, and ten cents for each mile necessarily traveled in attending the meetings of the board. (*Id.* § 13.)

*§ 354. **School lands to be selected and sold.** For the purpose of erecting said normal-school building, the governor, secretary of state, and auditor shall, within six months after the admission of Dakota as a state, or as soon thereafter as the government shall cede to the state of Dakota the school lands lying within her border, set apart for

the erection of said normal-school building twenty sections of land belonging to the state, which lands shall be selected from any lands not otherwise appropriated; and the governor, secretary of state, and auditor may, at their discretion, after advertising three months in at least four newspapers published in the state, sell said lands to the highest bidder at public sale; said land to be sold in quantities not exceeding one hundred and sixty acres to any one person at one bid: *provided*, *however*, that no part of said land shall be sold for a less sum than three dollars per acre. (*Id.* § 14.)

*§ 355. **Disposition of funds arising from sale.** The proceeds of said sale shall be deposited with the treasurer as a normal-school fund, and shall be drawn therefrom upon the warrant of the auditor, to be issued in pursuance of a certificate of the board of education, signed by the president and countersigned by the secretary, that the money is due and payable to the principal of the normal school or his assistants, or the teachers or officers employed, or the members of the board of education, as herein authorized, or for necessary incidental expenses in the support and maintenance of said school, or for the erection and completion of the normal school building. (*Id.* § 15.)

*§ 356. **Vacancies.** It shall be the duty of the governor to fill, by appointment, all vacancies that may, from any cause, occur in the board of education of the territorial normal school, and he may, from neglect of duty or any violation of the trust reposed, or the arbitrary exercise of the power conferred, remove any member of said board and appoint a suitable person in his stead. (*Id.* § 16.)

*§ 357. **Adjournment of sale of lands.** The governor, secretary of state, and auditor, may adjourn the sale of said lands from time to time, as they may deem necessary: *provided*, that such adjournment shall in no case extend beyond a period of more than one year from the day first appointed for the sale of said land. (*Id.* § 17.)

*§ 358. **Meetings of the board.** The board of education shall hold two regular meetings in each year, to-wit, during the first week in June and the first week in January in each year, at which first meeting the officers of the board shall be elected. All meetings of the board shall, when practicable, be in the normal-school building, and all financial matters, allowances, claims, and accounts shall be disposed of at such regular meetings only. Special meetings of the board may be called upon written order of the president of the same, which order shall specify the object of the meeting. An adjournment may be had from a regular or special meeting, but the journal must in either case state the reason in full of the same. A majority of the board shall constitute a quorum to transact business. A true and faithful journal of their proceedings shall be kept, at any reasonable time [open] to the inspection of any member of the board. (*Id.* § 18.)

*§ 359. **Report of the board.** The clerk of the board of education shall, on the first day of January of each year, transmit to the gov-

ernor a full report of the expenditures of the same for the previous year, setting forth, in full, each item and the date thereof. (*Id.* § 19.)

*§ 360. **No religious tests required.** The board of education in their regulations, and the principal in his supervision and government of the schools, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance on the same, but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in the school. (*Id.* § 20.)

*§ 361. **Payment of expenses of sales of lands.** All necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale, by a warrant drawn by the auditor upon the state treasurer: *provided*, that all accounts for expenses, above specified, shall be first approved by the superintendent of public instruction. (*Id.* § 21.)

NORMAL SCHOOL AT WATERTOWN.

*§ 362. **Normal school located at Watertown—object—proviso.** That a normal school for the territory of Dakota be established at Watertown, in Codington county, Dakota territory, the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching, and in all the varied branches that pertain to a good common-school education; also to give instruction in the mechanical arts, and in husbandry, and in agricultural chemistry, in the fundamental laws of the United States, and in what regards the rights and duties of citizens: *provided*, that a tract of land not less than eighty acres, within one mile from the corporate limits of the city of Watertown, aforesaid, be donated and secured to the territory of Dakota, in fee-simple, as a site for said normal school, within six months after the passage and approval of this act; and the governor of the territory is hereby empowered, and it is made his duty, to see that a good and sufficient deed be made to the territory for the same. (*Sess. Laws* 1881, *c.* 102, § 1.)

*§ 363. **Supervision.** Said normal school shall be under the direction of a board of education, and shall be governed and supported as hereinafter provided. (*Id.* § 2.)

*§ 364. **Board to erect building, etc.** The said board of education are hereby authorized, and it is made a part of their duty, to immediately commence the erection and construction of a suitable building for said normal school upon the grounds specified in this act, as a site for the same, as soon as a sufficient appropriation is secured for the erection thereof. They shall have the power to let contracts for the building and completing of said normal-school building, and shall have the entire supervision of its construction, providing that all contracts let for the erection and completion of said institution shall be let to the lowest responsible bidder, after notice of the letting of said contract shall have been published in at least four of the leading newspapers, located in different parts of the territory, for at least thirty days before the letting

of said contract; and the said board shall have the power to reject any or all bids. It is also the duty of said board of education, and they are hereby empowered, to make the selection of site for said normal school. (*Id.* § 3.)

*§ 365. **Number of board and terms of office—reports, etc.** Said board of education shall consist of five members, three of whom shall be appointed by the governor, and by and with the consent of the legislative counsel; one of whom shall hold his office six years, one for four years, and one for two years. The governor shall designate the one who shall hold his office for six years, the one for four years, and the one for two years. The territorial treasurer and superintendent of public instruction shall, by virtue of their offices, be members of said board. The territorial treasurer, by virtue of his office, shall be treasurer of said board, and the members thereof shall annually elect from their number a president and secretary. It shall be the duty of the secretary to keep an exact detailed account of the doings of said board, and he shall submit such reports to the legislature as are required by this act; and no member of said board of education shall, during his continuance in office as a member of said board, act as agent of any publisher or publishers of school books, or school-library books, either directly or indirectly; and the governor of the territory is hereby authorized and required, upon satisfactory evidence being produced to him that any member of said board is employed as such agent, or interested as aforesaid, to remove such member of said board from office and to appoint another in his place to fill such vacancy. (*Id.* § 4.)

*§ 366. **Powers of board to appoint and remove.** Said board shall have power to appoint a principal and assistant to take charge of said school, and such other teachers and officers as may be required in said school, and fix the salary of each and prescribe their several duties. They shall also have power to remove either the principal, assistant, or teachers, and appoint others in their stead. They shall prescribe the various books to be used in said school, and make all regulations and bylaws necessary for the good government and management of the same. (*Id.* § 5.)

*§ 367. **Notice when school is ready for pupils.** As soon as said normal school is prepared to receive pupils, the superintendent of public instruction shall give notice of the fact to each county clerk in the territory, and shall publish said notice in a newspaper published in each judicial district. (*Id.* § 6.)

*§ 368. **Applications for admission.** The board of education shall ordain such rules and regulations for the admission of pupils to said school as they shall deem necessary and proper. Every applicant for admission shall undergo an examination in such manner as shall be prescribed by the board, and if it shall appear that the applicant is not a person of good moral character, or will not make an apt and good teacher, such applicant shall be rejected. The board of education may, in their discretion, require any applicant for admission into said school,

prior to such admission, to sigh and file with said board a declaration of intention to follow the business of teaching schools in this territory, to pay or secure to be paid such fees or tuition as to said board shall seem reasonable. (*Id.* § 7.)

*§ 369. **Conditions of admission to school.** Any person may be admitted as a pupil of said normal school who shall pass a satisfactory examination: *provided*, that the applicant shall, before admission, sign a declaration of intention to follow the business of teaching schools in this territory: *and provided further*, that the pupil may be admitted without signing such declaration of intention, on such terms as the normal-school board may require or prescribe; and each county shall be entitled to send pupils in ratio to their representation in the legislature to which it may be entitled, not to exceed such number as the board may prescribe. (*Id.* § 8.)

*§ 370. **Visiting school by committee.** After said normal school shall have commenced its first term, and at least once in each year thereafter, it shall be visited by three suitable persons, not members, to be appointed by the board of education, who shall examine thoroughly into the affairs of the school, and report to the superintendent of public instruction or auditor their views in regard to its condition, success, and usefulness, and any other matter they may judge expedient. Such visitors shall be appointed annually. (*Id.* § 9.)

*§ 371. **Lectures.** Lectures in chemistry, comparative anatomy, the mechanical arts, agricultural chemistry, and any other science or any other branches of literature that the board of education may direct, may be delivered to those attending such school, in such manner, and on such terms and conditions, as the board of education may prescribe. (*Id.* § 10.)

*§ 372. **Certificate to qualified pupil.** As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies required by the board in such manner as may be required by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate which shall entitle the holder to teach a common school in any county in the territory, for the time and in the branches stated in said certificate. (*Id.* § 11.)

*§ 373. **School funds, how disbursed.** All funds appropriated for the use and benefit of said normal school shall be under the direction and control of the board of education, subject to the provisions herein contained. The treasurer of the territory shall pay out of such funds all orders or drafts for money to be expended under the provisions of this act; such orders or drafts to be drawn by the territorial auditor, on certificate of the secretary, countersigned by the president of the board. No such certificate shall be given except upon accounts audited and allowed by the board at their regular meetings. (*Id.* § 12.)

*§ 374. **Payment of salaries, etc.** Services and all other necessary traveling expenses, as hereinafter provided, incurred by the board

of education in carrying out the provisions of this act, shall be paid on the proper certificate, out of any funds belonging to said institution in the hands of the treasurer. Until the erection and completion of the necessary buildings, the principal, assistants, teachers, board of education, and other officers employed in said school, shall be paid out of the normal-school fund, and from the receipts for tuition after the erection of the necessary buildings. The members of the board of education shall be entitled to three dollars per day, and ten cents for each mile necessarily traveled in attending the meetings of the board. (*Id.* § 13.)

*§ 375. **School lands to be selected and sold.** For the purpose of erecting said normal-school building, the governor, secretary of state or territory, and auditor, shall, within six months after the admission of Dakota as a state, or as soon thereafter as the government shall cede to the state of Dakota the school lands lying within her border, set apart for the erection of said normal-school building twenty sections of land belonging to the state of Dakota, which lands shall be selected from any lands not otherwise appropriated; and the governor, secretary of state, and auditor may at their discretion, after advertising four months in at least four newspapers published in the state, sell said lands to the highest bidder at public sale; said land to be sold in quantities not exceeding one hundred and sixty acres to any one person at one bid: *provided, however*, that no part of said land shall be sold for a less sum than three dollars per acre. (*Id.* § 14.)

*§ 376. **Disposition of funds arising from sale.** The proceeds of said sale shall be deposited with the treasurer as a normal-school fund, and shall be drawn therefrom upon the warrant of the auditor, to be issued in pursuance of a certificate of the board of education, signed by the president and countersigned by the secretary, that the money is due and payable to the principal of the normal school or his assistants, or the teachers or officers employed, or the members of the board of education, as herein authorized, or for necessary incidental expenses in the support and maintenance of said school, or for the erection and completion of the normal-school building. (*Id.* § 15.)

*§ 377. **Vacancies.** It shall be the duty of the governor to fill by appointment all vacancies that may occur in said board of said school from neglect of duty. (*Id.* § 16.)

*§ 378. **Adjournment of sale of lands.** The governor, secretary of state, and auditor may adjourn the sale of said lands from time to time, as they may deem necessary: *provided*, that such adjournment shall in no case extend beyond a period of one year from the day first appointed for said sale. (*Id.* § 17.)

*§ 379. **Meetings of the board.** The board of education shall hold regular meetings in each year, to-wit, during the first week in June and the first week in January in each year, at which first meeting the officers of the board shall be elected. All meetings of the board shall, when practicable, be in the normal-school building, and all financial matters, allowances, claims, and accounts shall be disposed of at such regular

meetings only. Special meetings of the board may be called upon written order of the president of the same, which shall specify the object of the meeting. An adjournment may be had from a regular or special meeting, but the adjournment must in either case state the reason in full of the same. A majority of the board shall constitute a quorum to transact business. A true and faithful journal of their proceedings shall be kept, subject at any time to the inspection of any member of the board. (*Id.* § 18.)

*§ 380. **Report of the board.** The clerk of the board of education shall, on the first day of January of each year, transmit to the governor a full report of the expenditures of the same for the previous year, setting forth, in full, each item and the date thereof. (*Id.* § 19.)

*§ 381. **No religious tests required.** The board of education in their regulations, and the principal in his supervision and government of the schools, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance at said school, but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in the school. (*Id.* § 20.)

*§ 382. **Payment of expenses of sales of lands.** All necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale, by a warrant drawn by the auditor upon the state treasurer: *provided*, that all accounts for expenses, above specified, shall first be approved by the superintendent of public instruction. (*Id.* § 21.)

NORMAL SCHOOL AT ALEXANDRIA.

*§ 383. **Normal school established at Alexandria—its object—proviso.** *Be it enacted, etc.*, that a normal school for the territory of Dakota be established at Alexandria, in Hanson county, D. T., the exclusive purpose of which shall be the instruction of persons, both male and female, in the art of teaching, and in all the various branches that pertain to a good common-school education; also, to give instruction in the mechanical arts, and in husbandry and agricultural chemistry, in the fundamental law of the United States, and in what regards the rights and duties of citizens: *provided*, that a tract of land, not less than one hundred [and] sixty acres, within one mile from the corporate limits of the town of Alexandria, aforesaid, be donated and secured to the territory of Dakota, in fee-simple, as a site for said normal school, within six months after the passage and approval of this act; and the governor of the territory is hereby empowered and it is made his duty to see that a good and sufficient deed be made to the territory for the same. (*Sess. Laws* 1881, *c.* 98, § 1.)

*§ 384. **Supervision.** Said normal school shall be under the direction of a board of education, and shall be governed and supported as hereinafter provided. (*Id.* § 2.)

*§ 385. **Board to erect building, etc.** The said board of education are hereby authorized, and it is made a part of their duty, to im-

mediately commence the erection and construction of a suitable building for said normal school, upon the grounds specified in this act as a site for the same, as soon as a sufficient appropriation is secured for the erection thereof. They shall have the power to let contracts for the building and completing of said normal-school building, and shall have the entire supervision of its construction, providing that all contracts let for the erection and completion of said institution shall be let to the lowest responsible bidder, after the letting of said contracts shall have been published in at least four of the leading newspapers, located in different parts of the territory, for at least thirty days before the letting of said contract, and the said board shall have the power to reject any or all bids. It is also the duty of said board of education, and they are hereby empowered, to make the selection of said site for said normal school. (*Id.* § 3.)

*§ 386. **Number of board and terms of office—reports, etc.** Said board of education shall consist of five members, three of whom shall be appointed by the governor, and by and with the consent of the legislative council, one of whom shall hold his office six years, one for four years, and one for two years. The governor shall designate the one who shall hold his office for six years, the one for four years, and the one for two years. The territorial treasurer and superintendent of public instruction shall, by virtue of their offices, be members of said board. The territorial treasurer, by virtue of his office, shall be treasurer of said board, and the members thereof shall annually elect from their number a president and secretary. It shall be the duty of the secretary to keep an exact detailed account of the doings of said board, and he shall submit such reports to the legislature as are required by this act; and no member of said board of education shall, during his continuance in office as a member of said board, act as agent of any publisher or publishers of school books or school library books, either directly or indirectly; and the governor of the territory is hereby authorized and required, upon satisfactory evidence being produced to him that any member of said board is employed as such agent, or is interested as aforesaid, to remove such member of said board from office, and to appoint another in his place to fill such vacancy. (*Id.* § 4.)

*§ 387. **Powers of board to appoint and remove.** Said board shall have power to appoint a principal and assistant to take charge of said school, and such other teachers and officers as may be required in said school, and fix the salary of each and prescribe their several duties. They shall also have power to remove either the principal, assistant, or teachers, and appoint others in their stead. They shall prescribe the various books to be used in said school, and make all regulations and by-laws necessary for the good government and management of the same. (*Id.* § 5.)

*§ 388. **Notice when school is ready for pupils.** As soon as said normal school is prepared to receive pupils, the superintendent of public instruction shall give notice of the fact to each county clerk in

the territory, and shall publish said notice in a newspaper published in each judicial district. (*Id.* § 6.)

*§ 389. **Applications for admission.** The board of education shall ordain such rules and regulations for the admission of pupils to said school as they shall deem necessary and proper. Every applicant for admission shall undergo an examination in such manner as shall be prescribed by the board, and if it shall appear that the applicant is not a person of good moral character, will not make an apt and good teacher, such applicant shall be rejected. The board of education may, in their discretion, require any applicant for admission into said school, prior to such admission, to sign and file with said board a declaration of intention to follow the business of teaching schools in this territory, to pay or secure to be paid such fees for tuition as to said board shall seem reasonable. (*Id.* § 7.)

*§ 390. **Conditions of admission to school.** Any person may be admitted as a pupil of said normal school who shall pass a satisfactory examination: *provided*, that the applicant shall, before admission, sign a declaration of intention to follow the business of teaching schools in this territory: and *provided, further*, that the pupil may be admitted without signing such declaration of intention, on such terms as the normal-school board may require or prescribe; and each county shall be entitled to send pupils in ratio to their representation in the legislature to which it may be entitled, not to exceed such number as the board may prescribe. (*Id.* § 8.)

*§ 391. **Visiting school by committee.** After said normal school shall have commenced its first term, and at least once in each year thereafter, it shall be visited by three suitable persons, not members, to be appointed by the board of education, who shall examine thoroughly into the affairs of the school, and report to the superintendent of public instruction or auditor their views in regard to its condition, success, and usefulness, and any other matter they may judge expedient. Such visitors shall be appointed annually. (*Id.* § 9.)

*§ 392. **Lectures.** Lectures in chemistry, comparative anatomy, the mechanical arts, agricultural chemistry, and any other science, or any other branches of literature that the board of education may direct, may be delivered to those attending such school, in such manner and on such terms and conditions as the board of education may prescribe. (*Id.* § 10.)

*§ 393. **Certificate to qualified pupil.** As soon as any person has attended said institution twenty-two weeks, said person may be examined in the studies required by the board in such manner as may be required by them, and if it shall appear that such person possesses the learning and other qualifications necessary to teach a good common school, said person shall receive a certificate which shall entitle the holder to teach a common school in any county in the territory for the time and in the branches stated in said certificate. (*Id.* § 11.)

*§ 394. **School funds—how disbursed.** All funds appropriated for the use and benefit of said normal school shall be under the direction and control of the board of education, subject to the provisions herein contained. The treasurer of the territory shall pay out of such funds all orders or drafts for money to be expended under the provisions of this act; such orders or drafts to be drawn by the territorial auditor, on certificate of the secretary, countersigned by the president of the board. No such certificate shall be given except upon accounts audited and allowed by the board at their regular meetings. (*Id.* § 12.)

*§ 395. **Payment of salaries, etc.** Services, and all other necessary traveling expenses, as hereinafter provided, incurred by the board of education in carrying out the provisions of this act, shall be paid, on the proper certificate, out of any funds belonging to said institution in the hands of the treasurer. Until the erection and completion of the necessary buildings, the principal, assistants, teachers, board of education, and other officers employed in said school, shall be paid out of the normal-school fund, and from the receipts for tuition after the erection of the necessary buildings. The members of the board of education shall be entitled to three dollars per day, and ten cents per mile actually and necessarily traveled in attending the meetings of the board. (*Id.* § 13.)

*§ 396. **School lands to be selected and sold.** For the purpose of erecting said normal school building, the governor, secretary of state, and auditor shall, within six months after the admission of Dakota as a state, or as soon thereafter as the government shall cede to the state of Dakota the school lands lying within her border, set apart for the erection of said normal school building twenty sections of land belonging to the state of Dakota, which lands shall be selected from any lands not otherwise appropriated; and the governor, secretary of state, and auditor may, at their discretion, after advertising four months in at least four newspapers published in the state, sell said lands to the highest bidder at public sale; said land to be sold in quantities not exceeding one hundred and sixty acres to any one person at any one bid: *provided, however*, that no part of said land shall be sold for less than three dollars per acre. (*Id.* § 14.)

*§ 397. **Disposition of funds arising from sale.** The proceeds of said sale shall be deposited with the treasurer as a normal-school fund, and shall be drawn therefrom upon the warrant of the auditor, to be issued in pursuance of a certificate of the board of education, signed by their president and countersigned by the secretary, that the money is due and payable to the principal of the normal school or his assistants, as the teachers or officers employed, or the members of the board of education, as herein authorized, or for necessary incidental expenses in the support and maintenance of said school, or for the erection and completion of the normal-school building. (*Id.* § 15.)

*§ 398. **Vacancies.** It shall be the duty of the governor to fill, by appointment, all vacancies that may occur in said board of said school from neglect of duty. (*Id.* § 16.)

*§ 399. **Adjournment of sale of lands.** The governor, secretary of state, and auditor may adjourn the sale of said lands from time to time, as they may deem necessary: *provided*, that such adjournment shall in no case extend beyond a period of one year from the day first appointed for said sale. (*Id.* § 17.)

*§ 400. **Meetings of the board.** The board of education shall hold regular meetings in each year, to-wit, during the first week in June and the first week in January in each year, at which first meeting the officers of the board shall be elected. All meetings of the board shall, when practicable, be in the normal school building, and all financial matters, allowances, claims, and accounts shall be disposed of at such regular meetings only. Special meetings of the board may be called upon written order of the president of the same, which order shall specify the object of the meeting. An adjournment may be had from a regular or special meeting, but the adjournment must, in either case, state the reason in full of the same. A majority of the board shall constitute a quorum to transact business. A true and faithful journal of their proceedings shall be kept, subject at any time to the inspection of any member of the board. (*Id.* § 18.)

*§ 401. **Report of the board.** The clerk of the board of education shall, on the first day of January of each year, transmit to the governor a full report of the expenditures of the same for the previous year, setting forth in full each item and the date thereof. (*Id.* § 19.)

*§ 402. **No religious tests required.** The board of education in their regulations, and the principal in his supervision and government of the schools, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance at said school, but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in the school. (*Id.* § 20.)

*§ 403. **Payment of expenses of sales of land.** All necessary expenses arising from the advertising and sale of said lands shall be paid from the funds arising from said sale by a warrant drawn by the auditor upon the state treasurer: *provided*, that all accounts for expenses above specified shall first be approved by the superintendent of public instruction. (*Id.* § 21.)

BOARDS OF EDUCATION IN BISMARCK AND OTHER CITIES.

*§ 404. **When may establish board of education.** Any city, town, or village that now is or may hereafter be incorporated, whenever it has resident within its corporate limits children of lawful school age to the number of not less than one hundred and seventy-five, to be ascertained by a census thereof, taken by direction of the council or board of trustees and verified by the oath of the enumerator, may, by resolution of its council or board of trustees, provide and establish a board of education for such city, town, or village, with all the powers, duties, and obligations prescribed by this act: (*Sp. Laws* 1881, *c.* 41, § 1.)

*§ 405. **Election of board.** Such board of education shall consist of two members from each ward of such city, town, or village, who shall together constitute the board of education therefor. The members of such board shall be elected by the mayor and council, or president and board of trustees, of such city, town, or village, at a meeting thereof specially called for the purpose, at which the mayor or president shall preside. The election shall be *viva voce* upon a call of the roll, and the members of the council, and the mayor and the trustees and president, shall be each entitled to one vote equally, and a majority of all such persons and officers so entitled to vote in each city, town, or village shall be required to elect each member of such board of education. The members thereof shall be so elected singly, and a full record of the proceedings, and of the several roll-calls and ballots, and of the result in each case, shall be made by the proper clerk in the regular record-book of proceedings. One-half of the members of each board of education, except as hereinafter specially provided, shall be chosen to serve until one year after the first Tuesday of May following such election, and one-half for two years after such date, and one of those from each ward shall be elected for the shorter term and one for the longer term, as aforesaid; and thereafter the terms of office for the members of such boards shall be two years, and one member thereof for each ward shall be elected by the mayor and council, or the president and board of trustees, as hereinbefore provided, at a meeting to be held on the first Tuesday in May in each year after the first. The body electing the first members shall prescribe the time for their qualification, and for their first meeting and organization. (*Id.* § 2.)

*§ 406. **City of Bismarck.** This act shall take effect and be in force in the city of Bismarck from and after its passage and approval, without any act of its mayor and council or other officers, and without respect to any enumeration or the number of children of school age therein, and a board of education is hereby established therefor. The board of education for said city of Bismarck shall consist of six persons, two from each ward of said city; and the following persons, to-wit, George P. Flannery and George W. Sweet for the First ward, and James A. Emmons and John A. Stoyell for the Second ward, and John P. Dunn and Alexander McKenzie for the Third ward thereof, are hereby appointed members of said board of education for the said city of Bismarck, and they shall, on or before the third Monday in March, eighteen hundred and eighty-one, qualify by oath of office, and the said George W. Sweet for the First ward, James A. Emmons for the Second ward, and Alexander McKenzie for the Third ward, shall hold their offices until the first Tuesday in May, eighteen hundred and eighty-two; and the said George P. Flannery for the First ward, John A. Stoyell for the Second ward, and John P. Dunn for the Third ward, shall hold their offices until the first Tuesday in May, eighteen hundred and eighty-three, and all until their successors are duly elected and qualified; and members of said board shall, at and after the dates hereinbefore named, be elected, as in section two of this act provided. (*Id.* § 3.)

*§ 407. **Fractional districts caused by the establishment of board.** When, by the establishment of any board of education for any city, town, or village, parts of any school district or districts shall be cut off and left without the corporate limits and the jurisdiction of such board, the children of lawful school age residing within such parts so cut off shall be entitled to attend as pupils the schools of such city, town, or village, by the payment of a reasonable tuition, which shall be fixed by the board, and which must be paid for each term in advance. All pupils who so attend such schools for not less than sixty days in each year shall be included within the school census of such city, town, or village, and so treated in the apportionment of the county general school fund by the county superintendent of public schools, and in consideration of this the board of education shall fix a lower rate for the tuition of such pupils than for those admitted from territory not so previously included. This provision shall apply to all boards that have been heretofore or now are or shall be established under this or other acts, but it shall not prevent the organization of such adjacent and cut-off territory into school-districts or otherwise, as provided by this or the general school law. The secretary of such board of education shall annually, at the time provided by law for taking school census, certify in writing to the officer under such board, and the officer of each proper school corporation from which they come, the names and number of the pupils so attending, and they shall be excluded from the census of the district from which they so came, and included in the census of such city, town, or village. (*Id.* § 4.)

*§ 408. **Oath of member of board.** Each member of every such board shall take and subscribe an oath that he will support the constitution of the United States and the laws thereof governing the territory of Dakota, and that he will honestly and faithfully discharge all the duties of his office as a member of such board of education, which oath shall be filed in the office of the clerk of the city, town, or village. (*Id.* § 5.)

*§ 409. **Filling vacancies.** The mayor and council, or president and board of trustees, of any such city, town, or village may at any time elect members of such boards in the manner in section two provided, to fill any vacancies which may occur from any cause other than the expiration of the term of office of those elected, and the persons so elected shall serve out the unexpired term. (*Id.* § 6.)

*§ 410. **Removal.** Any member of a board of education may be removed from office for official misconduct by the mayor and council, or president and board of trustees, of the city, town, or village for which he serves, by a vote of two-thirds of all the members thereof; but a written copy of the charges preferred against such member shall be served upon him, and he shall be allowed an opportunity for refuting such charges of misconduct before removal. (*Id.* § 7.)

*§ 411. **Board a body corporate.** Every board of education for a city, town, or village heretofore established, and herein established

and provided for, shall be a body corporate in relation to and in execution of all the powers and duties conferred upon it by this act, or which may hereafter be conferred upon it for school purposes, by the name and style of "The Board of Education of the City (town or village) of———," (here insert the corporate name and style of the city, town, or village, respectively, wherein and for which each board is or shall be established,) and by such name shall be capable and have power to contract and be contracted with, to sue and be sued, and shall possess all the powers usual and incident to bodies corporate, and all such as shall be herein given, and shall procure and keep a common seal. A majority of every such board shall constitute a quorum. At the annual meeting of each board, held on the third Tuesday of May in each year, they shall elect one of their number president of the board, and whenever he shall be absent a president *pro tempore* shall be appointed. (*Id.* § 8.)

*§ 412. **Compensation.** The members of the board shall receive no compensation, and shall not be interested, directly or indirectly, in any contract for building, or for making any improvement or repairs, provided for in this act. They shall have the care and custody of all the public property in their city, town, or village pertaining to school purposes, and the general management and control of all school matters therein. (*Id.* § 9.)

*§ 413. **Meetings.** The annual meeting of each board shall be held on the third Tuesday of May in each year. Each board shall also meet for the transaction of business as often as once in each calendar month, and may adjourn for any shorter term. Special meetings may be called by the president, or, in case of his absence or inability to act, by any member of the board, as often as necessary, by giving a personal notice to each member of the board, or by causing a written or printed notice to be left at his last place of residence, at least forty-eight hours before the hour for such special meeting. (*Id.* § 10.)

*§ 414. **Secretary—duties of.** Each board shall appoint a secretary, who shall hold his office during the pleasure of the board, and whose compensation shall be fixed by the board. Said secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The said record, or a transcript thereof, certified by the secretary and attested by the seal of the board, shall be received in all courts as *prima facie* evidence of the facts therein set forth, and such records and all the books, accounts, vouchers, and papers of every such board shall be at all times subject to the inspection of the city council or the board of trustees, or other governing body of the city, town, or village for which the board is established, or any committee of such council or board, or any tax-payer of such city, town, or village. For the purpose of economy, the board of the city of Bismarck may appoint one of their own members secretary, in which event said secretary shall serve without compensation. (*Id.* § 11.)

*§ 415. **Taxes—for what purpose.** Every board of education of a city, town, or village shall have power, and it shall be their

duty, to levy and raise from time to time by tax such sums as may be determined by the board to be necessary and proper for any or all the following purposes:

1. To purchase, exchange, lease, or improve sites for school-houses.
2. To build, purchase, lease, enlarge, alter, improve, and repair school-houses and their out-houses and appurtenances.
3. To purchase, exchange, improve, and repair school apparatus, books, furniture, and appendages, and to purchase and sell or rent the necessary text or class books, and sell the necessary stationery for the pupils in the schools under its management and control; but the powers herein granted shall not be deemed to authorize the furnishing with class or text books any pupil whose parent or guardian shall be able to furnish the same.
4. To procure fuel and defray the contingent expenses of the board, including the compensation of the secretary.
5. To pay teachers' wages after the application of public moneys which may by law be appropriated and provided for that purpose. (*Id.* § 12.)

*§ 416. **Collection of taxes.** The tax so to be levied as aforesaid and collected by virtue of this act shall be collected in the same manner as other city, town, or village taxes, and for that purpose every said board of education shall have power to levy and cause to be collected such taxes as are herein authorized, and shall cause the rate for each purpose to be certified by the secretary to the clerk of the city, town, or village in time to be added to and put upon the annual tax-list of such city, town, or village. And it shall be the duty of every such clerk to calculate and extend upon the annual assessment roll and tax-list of the city, town, or village such tax so levied by said board, and such taxes shall be collected as other city, town, or village taxes are collected. And in case the city council or board of trustees of any such city, town, or village shall fail to levy any tax for city, town, or village purposes, or shall fail to cause an assessment roll or tax-list to be made, such as now is or may hereafter be provided by ordinance, by-law, or statute, the said board may cause an assessment roll and tax-list to be made out by its secretary and put into the hands of the city, town, or village treasurer, with a warrant for the collection of the same, under the hand of the president and seal of the board and attested by the secretary, and may cause the same to be collected in the same manner as other city, town, or village taxes are collected, or as may by a resolution of such board be provided. (*Id.* § 13.)

*§ 417. **Various funds — their uses.** The amount raised for teachers' wages and contingent expenses shall be only such, as, together with the public money coming to such city, town, or village from the territorial and county fund and other sources, shall be sufficient to maintain efficient and proper schools for the children in such city, town, or village; nor shall the tax for the purchasing, leasing, or improving sites, and the building, purchasing, leasing, enlarging, altering, or repairing of school-houses exceed in any one year two cents on the dollar of valu-

ation of the taxable property of such city, town, or village, and each of said boards of education is authorized and directed, when necessary, to borrow in anticipation the amount of the taxes so to be raised and collected as aforesaid. (*Id.* § 14.)

*§ 418. **May issue bonds when tax is insufficient.** The board of education of each of said cities, towns, and villages are authorized and empowered, and it shall be their duty, whenever the said board shall deem it necessary, in order to an efficient organization and establishment of schools in such city, town, or village, and when the taxes authorized by this act shall not be sufficient or shall be deemed by the board burdensome upon the tax-payers of such city, town, or village, from time to time to issue the bonds of such city, town, or village in denominations of not less than one hundred dollars, payable not more than ten years after date, and bearing interest at a rate of not more than eight per centum per annum, payable semi-annnally on the first days of January and July, and showing upon their face that they are issued for school purposes, and cause the same to be negotiated and sold at not less than par, and the money realized therefrom deposited with the treasurer of such city, town, or village to the credit of the board of education thereof. And when any bonds shall be so negotiated and sold it shall be the duty of the said board of education of such city, town, or village to provide by tax for the regular and prompt payment of the interest and principal of said bonds: *provided, however*, that at no time shall the aggregate amount of such bonds, issued under the provisions of this act, and any preceding special and general acts for school purposes, exceed twelve thousand dollars for the city of Bismarck, nor exceed five thousand dollars each for any other city, town, or village that now is or may hereafter be incorporated, unless special authority of law be given for an additional amount. (*Id.* § 15.)

*§ 419. **Payment of county school funds.** All moneys to be raised pursuant to the provisions of this act, and all school moneys which shall by law be appropriated or apportioned to or provided for every such city, town, or village shall be paid over to the treasurer thereof; and the county treasurer of the county in which such city, town, or village is situated, shall, from time to time, as he shall receive the county school funds, and at least once every six months, pay over to said city, town, or village treasurer the proportion thereof belonging to such city, town, or village, the same as though such city, town, or village constituted one school-district in said county; and for that purpose every board shall have power to cause all needful steps to be taken, including census reports, or other acts or things, to enable such board to receive the school moneys due and belonging or accruing to such city, town, or village as fully and completely as though said city, town, or village formed one of the school-districts of the county in which it is situated. (*Id.* § 16.)

*§ 420. **Bond of treasurer.** The treasurer of every such city, town, or village shall give such bonds to the board of education thereof, in such sums, and with such conditions and sureties as they shall, from

time to time, require in order to insure the safe-keeping of the school funds, which shall be in addition to his other bonds; and the said treasurer, and his sureties upon such bond, shall be accountable to the board for the school moneys that come into his hands, and in case of a failure of such treasurer to give such bonds when required thereto by such board within ten days thereafter, such treasurer's office shall become vacant, and the mayor and council of such city, or the president and board of trustees, or other governing body of such town or village, shall appoint another person in his place, who shall give such additional bonds. (*Id.* § 17.)

*§ 421. **Funds—how kept.** All moneys required to be raised by virtue of this act shall be paid in cash or in the warrants, hereinafter provided, drawn on the school funds only, and such moneys, and all moneys received by every such city, town, or village, for the use of the common schools therein, shall be deposited for the safe-keeping thereof with the treasurer of said city, town, or village, to the credit of the board of education thereof, and shall be by him safely kept separate and apart from any other funds of said city, town, or village until drawn from said treasury, as herein provided. The treasurer shall pay out the moneys authorized by this act, to be received by him upon warrants drawn by the president, countersigned by the secretary, and attested by the seal of said board of education. (*Id.* § 18.)

*§ 422. **Powers of board of education.** Every such board shall have power, and it shall be their duty,—

1. To organize and establish such and so many schools in their city, town, or village as they shall deem requisite and expedient, and to change and discontinue the same.
2. To purchase, sell, exchange, and hire school houses and rooms, lots or sites for school-houses, and to fence and improve them as they may deem proper.
3. Upon such lots and upon such sites as now are owned by such city, town, or village, or which are situated within the corporate limits thereof, and owned by any school-district lying wholly or partly within such corporate limits, to build, enlarge, alter, improve, and repair school-houses, out-houses, and appurtenances as they may deem advisable.
4. To purchase, sell, exchange, improve, and repair school apparatus, books for indigent pupils, furniture, and appendages, and to provide fuel for the schools; and, if they deem it advisable, to purchase class and text books and stationery, and other necessary articles required by pupils in their school work, and sell or rent them to the pupils in the schools under their management and control.
5. To have the custody and safe-keeping of the school-houses, out-houses, books, furniture, appurtenances, and other school property, and to see that the ordinances and by-laws of the mayor and city council, the president and board of trustees, or the board of trustees or other governing body of such city, town, or village, in relation thereto, are observed.
6. To contract with, license, and employ all teachers in said schools, and at their pleasure to remove them.

7. To pay the wages of such teachers out of the moneys appropriated, apportioned, and provided by law for the support of common or public schools in such city, town, or village, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised by this act.

8. To defray the necessary and contingent expenses of the board, including the compensation of the secretary.

9. To have in all respects the superintendence, supervision, and management of the common or public schools in such city, town, or village, and from time to time to adopt, alter, modify, and repeal, as they may deem expedient, rules and regulations for their organization, grading, government, and instruction, or the reception of pupils and their transfer from one school to another, and generally for their good order, prosperity, and utility.

10. To prepare and report to the mayor and council, the president and board of trustees, or the board of trustees, or other governing body of such city, town, or village such ordinances, by-laws, and regulations as may be necessary and proper for the protection, safe-keeping, care, and preservation of school houses, lots, and sites, and appurtenances, and all the property belonging to the city, town, or village connected with or appertaining to the schools, and to suggest proper penalties for the violations of such ordinances, by-laws, and regulations; and annually on or before the thirtieth day of June of each year, to determine and certify to the clerk of such city, town, or village the rate of taxation, in their opinion, necessary and proper to be levied, under the provisions of this act, for the year commencing on the first day of July thereafter; and also at any time to determine how many and what denomination of bonds shall issue and be sold to pay the extraordinary outlays required. (*Id.* § 19.)

*§ 423. **Visiting schools.** Each member of such board shall visit all the public schools in the city, town, or village at least twice in each year of his official term, and every board shall provide that each of such schools shall be visited by a committee of three or more of their number at least once during each term. (*Id.* § 20.)

*§ 424. **Non-resident pupils.** Every board of education shall have power to allow the children of persons not resident in the city, town, or village to attend the schools thereof under their care and control, upon such terms as said board may prescribe, fixing the tuition which shall be paid therefor. (*Id.* § 21.)

*§ 425. **Concerning expenditures.** It shall be the duty of each board in all their expenditures and contracts to have reference to the amount of moneys which shall be subject to their order during the current year for the particular expenditures in question, and not to exceed that amount. (*Id.* § 22.)

*§ 426. **Title of property—where vested.** The title of and to the school houses, sites, lots, furniture, books, apparatus, and appurtenances, and all other property belonging to the school-district or dis-

tricts comprised by and included partly or wholly within every such city, town, or village for which a board of education is hereby established or continued, and all such property lying and being within such city, town, or village, and all such property in this act mentioned, shall be vested in the particular city, town, or village wherein it lies or to which it so pertains for the use of schools; and the same, while used or appropriated for school purposes, shall not be levied upon or sold by virtue of any warrant or execution or other process, nor be subject to any judgment lien, nor be subject to taxation for any purpose whatever; and every such city, town, or village shall, in its corporate capacity, be able and capable to take, hold, and dispose of, and transfer any real or personal estate and property transferred to it by gift, grant, bequest, or devise for the use of the public common-schools of said city, town, or village, whether the same be transferred in terms to such city, town, or village by its proper name and style, or by designation, or to any person or persons or body for the use of said schools. (*Id.* § 23.)

*§ 427. **Same.** Whenever any real property is purchased by any such board of education, the transfer or grant and conveyance therefor shall be taken to the "city, town, or village of ———, for the use of schools," (inserting the proper corporate name of the particular city, town, or village;) and whenever any sale is made by any such board it shall be so resolved, which resolution shall be spread upon the records of the board, and the conveyance therefor shall be made and executed in the corporate name of the particular city, town, or village by the president of the board of education thereof, attested by the secretary of said board, and under the seal thereof, and acknowledged by said president and secretary. And the president and secretary of every such board shall have full power and authority to execute conveyances upon such sale or exchange, with or without covenants of warranty, on behalf of the city, town, or village for which their board is established. (*Id.* § 24.)

*§ 428. **Reports.** It shall be the duty of every such board of education, at least fifteen days before the annual election for members of said board, to prepare and report to the mayor and city council of its city, or to the president and board of trustees of its town or village, true and correct statements of the receipts and disbursements of moneys, under and in pursuance of the provisions of this act, during the preceding year, which accounts shall be stated under appropriate heads:

1. The moneys raised by the board under section thirteen of this act.
2. The school moneys received by the treasurer of the city, town, or village from the county treasurer.
3. The moneys received by the treasurer of the city, town, or village under section sixteen of this act.
4. All other moneys received by such treasurer, subject to the order of the board, specifying the sources from which they shall have been derived; and to these ends the treasurer shall make report to said board when required, and as required, of all school moneys received and disbursed by him.
5. The manner in which sums of money shall have been expended,

specifying the amount under each head of expenditure; and the city council of such city, or the board of trustees of such town or village, shall, at least one week before such election, cause the same to be published in all the newspapers of such city, town, or village which will publish the same gratuitously. (*Id.* § 25.)

*§ 429. **Power of city authorities.** The mayor and city council of every such city, and the president and board of trustees of every such town or village, shall have power, and it shall be their duty, to pass such ordinances, regulations, or by-laws, as the board of education thereof may report as necessary for the protection, preservation, safe-keeping, and care of the school houses, lots, sites, appurtenances, and appendages, libraries, books, and all necessary property belonging to or connected with the schools of such city, town, or village, and to impose proper penalties for the violation thereof; and all such penalties shall be collected in the same manner that the penalties for the violation of the ordinances or by-laws of such city, town, or village are by law collected; and when collected shall be paid to the treasurer of the city, town, or village, to the credit of the board of education thereof, and shall be subject to their order as herein provided. (*Id.* § 26.)

*§ 430. **Fines and forfeitures.** All fines, penalties, and forfeitures for the violation of any ordinance or by-law of any such city, town, or village shall, when collected, be paid by the officers receiving the same into the treasury of the city, town, or village, to the credit of the board of education thereof, and subject to their order as other moneys raised pursuant to the provisions of this act. (*Id.* § 27.)

*§ 431. **Clerk to notify person elected.** It shall be the duty of the clerk of such city, town, or village, immediately after the election of any person as a member of the board of education thereof, personally or in writing to notify him of his election; and if any such person shall not, within ten days after receiving such notice of his election, take and subscribe the oath as herein provided, and file the same with said clerk, the city council, or the board of trustees of the village or town, may consider it as a refusal to serve, and proceed to fill the vacancy occasioned by such refusal. And if any person herein appointed as member of any particular board shall neglect so to qualify by the date specially prescribed for such board, the clerk shall notify the council or trustees of such neglect, and a vacancy shall exist for each person so failing to qualify, and the mayor and council or the president and trustees of such city, town, or village shall proceed to fill such vacancy or vacancies by the election of suitable and proper persons, who shall hold their offices as herein provided for such persons herein appointed. (*Id.* § 28.)

*§ 432. **Report to superintendent of public instruction.** Every board of education shall, on or before the first day of September in each year, report, by its secretary to the superintendent of public instruction, all the facts, financial statements, statistics, and other matters relating to the schools, school funds, or property under the control of the board, which now are or may hereafter be by law required to be reported

by county superintendents in their annual reports, and such further facts as may be required by the superintendent of public instruction for his annual report; and the board is not required to so report to the county superintendent except the annual census of children of school age, which must be reported the same as if such city, town, or village was one of the school-districts in the county where situated. (*Id.* § 29.)

*§ 433. **Duty of school-district officers upon organization of board.** When any board herein appointed or so elected shall be organized, it shall at once assume the management and control of the public schools in such city, town, or village, and the officers of the school district or districts within the same shall turn over to them all moneys and other property belonging to said district or districts as are in such city, town, or village, for the use of schools under the provisions of this act: *provided, however,* that the taxes heretofore raised and voted therein, and not collected, so far as the same shall have been assessed upon the property of and within such city, town, or village, shall be collected by the proper officers and paid over to the treasurer of such city, town, or village, for the use of such board of education, and a proportionate amount of the debts and liabilities of such district or districts shall be assumed and paid by such city, town, or village, through its said board of education, the same as though they had been incurred and contracted by such board; and to that end it shall be the duty of the officers of every such school-district to make full, true, and accurate statements of the property, finances, and condition of said districts to the board immediately upon its organization. The county superintendent of schools is authorized and required to reorganize that part of the district or districts outside of the corporate limits, and call school-meetings for that purpose; or he may attach such territory to other districts, without petition, as to him shall seem best for their school interests: *provided, nevertheless*, that the school-district officers of all districts wholly or partly within such city, town, or village shall continue to act as such, and the said districts shall continue their existence in law until the complete organization of the board of education as herein provided for such city, town, or village: *and provided, further*, that the cities of Deadwood, Yankton, Fargo, and Vermillion, and the village of Sioux Falls, and the public schools therein, be, and the same are hereby, specially excepted from provisions of this act. (*Id.* § 30.)

*§ 434. **Special election.** Nothing in this act shall be so construed as to authorize the issue of bonds until after it shall have been submitted to a vote of the people of the city of Bismarck at a regular annual or special election called for that purpose, and a majority of all the legal voters voting thereat shall have voted in favor thereof. (*Id.* § 31.)

See page 669.

CHAPTER XLI.

PROTECTION OF GAME.

FISH COMMISSIONER.

*§§ 22–26. **Repealed.** (*Sess. Laws* 1885, *c.* 141, § 2.) See page 671.

PROTECTION OF FISH.

*§ 27. **Persons building or owning dams to make passage-way for fish.** There shall be erected and maintained by the owner or owners of any dam across the Sioux, Dakota, and Sheyenne rivers, a fish-way, at least one foot in depth, at the edge of dam, and of proper width to allow all fish endeavoring to migrate to the waters of said rivers above the dam to pass over the same. The said fish-way shall be placed at an angle of not more than thirty degrees, and extend entirely to the running water below the dam; and it shall be protected on each side by an apron, at least one foot in height, to confine the waters therein. Said fish-way shall be constructed under the supervision of the county commissioners of the counties where said dams are located, and be located at such place in said dam, and built in such manner and of such material, as they may direct: *Provided*, that the provisions of this act shall not apply to mill-dams already in existence on the Sioux river, as long as they are in good repair; but whenever such dams need reconstruction, the provisions of this act shall be in full force. (*Sess. Laws* 1885, *c.* 60, § 1.)

*§ 28. **When commissioners of county may build fish-way.** Whenever the owner or occupant of any such dam neglects or refuses to construct such fish-way or chute over the same, the commissioners of the county in which such dam is situated shall proceed, on notice to them in writing, made by five freeholders of the county, to let the work of erecting such fish-way or chute, and providing material therefor, to the lowest responsible bidder, and all expenses attendant upon the erection or maintenance of the same shall be paid by the owner or the occupant of the dam, [and] shall be recovered in the name of the person so building such fish-way or chute, upon the acceptance of the same by the county commissioners, and if not paid by said dam-owners or occupants, the same shall become a lien on said property, and shall be collected as is provided in enforcing mechanics' liens. (*Id.* § 2.)

*§ 29. **Repealing clause.** All acts or parts of acts in conflict with this act are hereby repealed. (*Id.* § 3.)

See page 671.

CHAPTER XLII.

COUNTY BOUNDARIES AND ORGANIZATION.

*§ 11. **Petition for organization of county.** Whenever the voters of any unorganized county in this territory shall be equal to one hundred and fifty or upward, and at least one hundred and fifty thereof shall desire to have said county organized, they may petition the governor, setting forth that they have the requisite number of legal voters to form a county organization, and request him to organize said county, as hereinafter provided. (*Sess. Laws* 1885, *c.* 40, § 1.)

*§ 12. **Election to be called—form of notice.** Whenever the voters of any unorganized county in this territory shall petition the governor, as provided in the preceding section, and the said governor shall be satisfied that such county has one hundred and fifty legal voters, it shall be the duty of the governor, and he is hereby authorized, to call an election in said unorganized county, and fix one or more places in said county as the polling places therein, and shall fix the time for holding said election; and the governor shall thereupon issue a notice of election, which notice shall be substantially in the following form, to-wit:

Notice is hereby given that on the ——— day of ———, 18—, at the following place, (or places, as the case may be,) ———, in the county of ———, an election will be held for the following officers of the said county of ———, in the said territory of Dakota, in the organization of said county, (name the officers to be elected,) and also for the temporary location of the county seat of said county, which election will be open at the hour of eight o'clock in the morning, and will continue open until five o'clock in the afternoon of the same day.

Dated this ——— day of ———, 18—.

———————,
Governor.

Attest: ———————,
Secretary.

(*Id.* § 2.)

*§ 13. **Officers — election — term of office.** There shall be elected by the qualified electors of said unorganized county all of the officers of said county as is or may be provided by law for organized counties, which officers shall hold their respective offices until the next general election thereafter, and until their successors are elected and qualified. (*Id.* § 3.)

*§ 14. **Selection of temporary county seat.** The electors at such election are hereby empowered to vote for and select a county seat of such county temporarily by ballot, subject to be changed thereafter as provided by law, and each voter at such election may designate on his ballot the place of his choice for county seat, and the place hav-

ing the highest number of votes polled shall be the temporary county seat. (*Id.* § 4.)

*§ 15. **Division into election precincts.** Whenever the governor shall have made out and completed said notice of election, he shall cause the same to be delivered to the clerk of the district court of the judicial subdivision to which said unorganized county is attached for judicial purposes, in the county where the court is held for such judicial subdivision, at least fifty days prior to the time fixed for said election, and thereupon, and at least forty days prior to the time fixed by the governor in said notice for such election, the said clerk of the district court shall take to his assistance the chairman of the board of county commissioners and register of deeds, who shall meet at the office of said clerk of the district court at the time fixed by him, and the said officers, or a majority of them, shall thereupon, if the governor shall fix more than one place for holding the election in said unorganized county, divide said county into election precincts, in accordance with said notice, regard being had for the convenience of the voters. And the said clerk of the district court shall thereupon add, at the foot of each certified copy of said notice of election, a further certificate, signed by him, under the seal of the court, showing a division of the said county into election precincts, and the boundaries thereof, as determined by said board, and the said clerk of the district court of said county shall cause the said notice and certificate to be published for at least thirty days prior to said election, in one newspaper of general circulation in said judicial subdivision, printed and published in the county where the court for such subdivision is held, and to deliver to the sheriff or coroner of the county where such court is held, or other person designated by him, five certified copies of said notices, and the certificate at the foot thereof, dividing the county into voting precincts, if any, which original notice shall be filed in the office of the clerk of said court as a record therein. (*Id.* § 5.)

*§ 16. **Appointment of judges of election.** It shall be the duty of the said clerk of the district court, register of deeds, and chairman of the board of county commissioners, or a majority thereof, at the same meeting mentioned in the preceding section, to appoint three capable and discreet persons, possessing the qualifications of electors, in said unorganized county, to act as judges of election at each polling-place in said county, and thereupon said clerk of the district court shall make out and deliver to the sheriff, coroner, or other person that may be designated by them, after the appointment of said judges, a notice, in writing, thereof, directed to the judges of election so appointed, and it shall be the duty of the sheriff, coroner, or other person so appointed, as provided in this section, within ten days after receiving such notices, to serve the same upon each of the said judges of election. (*Id.* § 6.)

*§ 17. **Notices of election to be posted.** The sheriff, coroner, or other person, to whom such notices of election shall be delivered as aforesaid, shall put up in five of the most public places in each of the voting precincts in said unorganized county, at least twenty days previ-

ous to the time of holding such election provided for in this act, one of each of the notices of election, with the said certificate thereto, [and one] shall be posted at the house where said election is authorized to be held. (*Id.* § 7.)

*§ 18. **Vacancies in office of judges of election, how filled.** If any person, appointed to act as judge of election as aforesaid, shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the vote of such qualified electors residing within the county or voting precinct as may then be present at the place of election, and the person or persons so elected to fill the vacancy or vacancies shall be, and are hereby, vested in that election with the same power as if appointed judges of election as provided for in this act. Said judges of election shall choose two persons, having the qualifications of electors, like themselves, to act as clerks of such election. (*Id.* § 8.)

*§ 19. **Provisions of election law to apply.** All the provisions of chapter twenty-seven of the Political Code of Dakota, entitled "Elections," and all amendments thereto, not inconsistent with the provisions of this act, shall apply to all elections held under the provisions of this act. (*Id.* § 9.)

*§ 20. **Appointment of supervisors of election.** It shall be the duty of the governor, at the time of calling said elections, or at least thirty days prior to the time fixed for such election, to appoint a supervisor of election for each polling-place in said unorganized county, who shall not be a resident of said county, or in any manner interested in the vote therein, but shall possess all the qualifications of an officer of the territory. Such supervisor shall, before he enters upon the duties of his office, take and subscribe the oath of office required by law, and also that he is not, and will not in any manner be, directly or indirectly interested in the location of any county seat in said county, and will not be so interested therein, and is not the owner of any land or interests therein situated in said county, and shall file the same with the secretary of the territory. (*Id.* § 10.)

*§ 21. **Duties of supervisors of election.** It shall be the duty of the said supervisor of election to furnish at said election, at the time and place fixed for such election, a ballot-box in due form for use at said election. But if such supervisor of election should fail or neglect to so furnish said ballot-box at the time and place where such election is held, then any resident and legal voter at such poll shall have authority to furnish a ballot-box for use at said election, and the said supervisor shall at the same time and place furnish the proper and necessary poll-books for use at said election in the form provided by law; but if said supervisor of election should neglect or refuse to produce and furnish such poll-books at said election, then any qualified voter at said election is authorized to produce and furnish such poll-books and deliver the same to the judges of election. (*Id.* § 11.)

*§ 22. **Duty to canvass the votes and make report.** The supervisors of election, appointed under the provision of this act, are authorized and required to attend at all times at the places for holding said elections, for which he is appointed, for counting the votes cast at such election, to challenge any vote by any person whose legal qualifications the supervisor may doubt, to be and remain where the ballot-boxes are kept, at all times after the polls are opened, until every vote cast at such election has been counted, and until the canvass of all votes is completed, and the proper and requisite certificates or returns made by the judges and clerks of election, and to personally inspect and scrutinize from time to time, and at all times, on the day of election, the manner in which the voting is done, and the way and methods in which the poll-books and tally-sheets therein are kept, and to the end that each candidate voted for at such election, and each place voted for as county seat, shall have the benefit of every vote cast for him, or for such place voted for as county seat. The supervisors of election are, and each of them is, required to personally scrutinize and assist in the counts and canvass of each ballot, in the election precinct for which he was appointed as supervisor, and to make out and deliver to the clerk of the said district court any statement of the truth or accuracy of the poll-books, and the truth or fairness of the election and canvass thereof, and whether in his opinion there was illegal voting at said election, and, if so, the extent of such illegal voting, and the nature and character thereof, if any, in order that the facts, as they appear to such supervisor, may become known; which report shall remain among the files of the clerk of the said district court. (*Id.* § 12.)

*§ 23. **Authority of supervisors of election.** And to better enable the supervisors of election to discharge their duties, they are authorized and directed, on the day of such election, to take, occupy, and remain in such positions, from time to time, during such election, whether before or behind the ballot-boxes, as will, in their judgment, best enable them to see each person offering to vote, and as will best conduce to their scrutinizing the manner in which the voting is being done, and at the close of the polls for the reception of the votes they are required to place themselves in such positions, in relation to the ballot-boxes, for the purpose of engaging in the work of assisting in the canvass of the ballots, as will enable them to fully perform their duties in respect to such canvass provided for, and shall there remain until every duty in respect to such canvass, certificates, and returns has been wholly completed. (*Id.* § 13.)

*§ 24. **Interference with official acts of supervisors a felony.** And if any person shall interfere with the clerks, judges, or supervisors of election, in the exercise and discharge of their duties, or shall interfere, hinder, molest, or threaten to molest, any of such officers in the discharge of their duties, or shall cast any illegal vote at such election, they shall be deemed guilty of felony, and shall, upon conviction thereof, be punished as provided in section nineteen of this act. (*Id.* § 14.)

*§ 25. **Ballots, how cast.** The ballots at such election shall be folded by the voters and delivered to one of the judges of election, and if the judges and supervisors of election, or a majority of them, be satisfied the person offering the vote is a legal voter, the clerks of the election shall enter the name of the voter and his number under the proper heading in the poll-books, and the supervisors of election, and also the judges of election, shall thereupon indorse on the back of the ticket offered, the number corresponding with the number of the voter on the poll-book, and shall immediately put the ticket into the ballot-box. (*Id.* § 15.)

*§ 26. **Mode of counting and preserving ballots cast.** After the opening of the polls no adjournment shall be had, nor shall any recess be taken until the votes cast at such election shall have been counted and the result publicly announed. All the ballots counted by the judges and supervisors of election shall, after being read, be strung upon a strong thread or twine, in the order in which they have been read, and after such ballots have been all counted and so strung, the thread shall be tied in a knot, which knot shall be covered by wax, as directed by the supervisors of election, and thereupon it shall be carefully enveloped and sealed up by the judges of election in presence of the supervisors, and immediately placed in the ballot-box, together with the said poll-books, which ballot-boxes shall be carefully locked up or fastened and sealed by the judges of election, in the presence of said supervisors, before the same shall be delivered to them, or either of them, as provided in this act. (*Id.* § 16.)

*§ 27. **Transmission of ballots and election books to register of deeds.** The judges of election shall, after the canvass of the votes has been closed, as provided by law, thereupon inclose and seal one of the poll-books, and, under cover, direct the same to the register of deeds of said county to which said unorganized county is attached for judicial purposes, and the book thus sealed shall thereupon be delivered to the supervisor of election, and shall that way be conveyed by such supervisor to and delivered to the said register of deeds, at his office, within three days after the closing of the polls, and the other poll-book, inclosed in the ballot-box as aforesaid, together with the ballots inclosed and sealed therein by such judges and supervisors, shall, within the same time, be deposited by said supervisors with the clerk of the district court for such judicial subdivision; and the said poll-book, in the office of the register of deeds, shall be subject to inspection at any time thereafter, and said poll-book shall be reserved as a public record; and the ballots and ballot-boxes, with the poll-book therein, shall be carefully kept closed and sealed until they shall be ordered opened by the district court of said subdivision, or the judge thereof. (*Id.* § 17.)

*§ 28. **Misconduct of election officers is felony.** If any of the supervisors, judges, or clerks of election shall in any manner interfere with any of the ballots, ballot-boxes, or poll-books, other than as is provided by this act and the laws of the territory, or shall willfully aid

or assist in making any false count of the ballots, or willfully falsify the poll-books in any manner, or willfully make any false return of the votes; or if any supervisor of election shall willfully refuse or neglect to deliver such poll-book and ballot-boxes to the officers provided for in this act within the time specified in this act, safe and with the seals unbroken; or if any supervisor shall in any manner interfere with such poll-books, ballots, or ballot-boxes, other than to deliver them to the officers provided for in this act,—he shall be deemed guilty of a felony, and upon a conviction thereof shall be fined in a sum not exceeding five thousand dollars, and be imprisoned in the territorial prison for not less than one year or more than five years. (*Id.* § 18.)

*§ 29. **Duty of register of deeds.** The said register of deeds of the county to which such unorganized county is attached for judicial purposes, shall, within the time prescribed by law for the canvass of votes, take to his assistance the said probate judge, the said clerk of the district court, and a majority of the county commissioners of his said county, who shall proceed to open said returns, and make an abstract of the votes cast at said election, in the following manner: The abstract of the votes for county officers shall be on one sheet, and the abstract of votes for the temporary location of the county seat shall be on a separate sheet; and it shall be the duty of said register of deeds immediately to make out a certificate of election to each of the persons having the highest number of votes for such county officers, and deliver such certificate to the persons so elected; and immediately after canvassing the returns, and making an abstract of the votes, as provided in this section, the register of deeds shall make a certified copy of each abstract, and forward the same to the secretary of the territory; and when the votes are canvassed for county seat, as provided in this section, the place having the highest number of votes shall be the temporary county seat, and such place shall be so declared the county seat by said board, or a majority of them. (*Id.* § 19.)

*§ 30. **Qualification of election officers.** The officers elected under the provisions of this act shall proceed to qualify in the manner provided by law for such officers, within twenty days after the canvassing of such votes, as provided for in the preceding section; and the county commissioners, after they have so qualified, shall immediately convene at the place so selected as the county seat of said unorganized county, as canvassed and declared by said canvassing board, and proceed to the discharge of their duties as said county commissioners in the organization of said county, as is now or may be hereafter provided by law; and if any person elected to any office shall fail or refuse to qualify within thirty days after such canvass, his office shall be deemed vacant, and shall be filled in the manner provided by law for the filling of vacancies; and if any one or more of the county commissioners shall fail or refuse to qualify, as provided by law, then the remaining member or members of said board, with the judge of the probate court and register of deeds of said county, even before the said two such officers named

have given their bond, shall immediately appoint some suitable person to fill the vacancy in the office of county commissioner. (*Id.* § 20.)

*§ 31. **Division of county into commissioner districts.** The county commissioners elected or appointed under the provisions of this act shall have power to divide the county into three commissioner districts, which shall be numbered from one to three, and said districts shall not be changed oftener than once in three years, and then only at the regular sessions in January, April, or July; and one commissioner shall be elected from each of said districts at the next general election after such organization, one of whom shall be chosen for the term of one year, one for two years, and one for three years, and one annually thereafter, as provided by law. (*Id.* § 21.)

*§ 32. **Compensation of supervisors of election.** The said supervisors of election shall receive for their services the sum of four dollars per day for the time actually and necessarily employed, and ten cents per mile for necessary travel, to be approved by the governor, and audited and paid out of the territorial treasury. (*Id.* § 22.)

*§ 33. **Compensation of sheriff or person serving notices.** The officer or person serving the notices on the judges of election, and posting the notices as provided in this act, shall receive for his services the amount authorized by law for like services performed by a sheriff in all organized counties; and the clerk of the district court, and other county officers required to perform the services required in this act, shall receive two dollars per day for the time actually and necessarily employed, and the printers and publishers shall receive the legal rates for the publication of said notices, all of which sum shall be audited and paid by the said unorganized county as soon as the said county shall be organized under the provisions of this act. (*Id.* § 23.)

*§ 34. **Effect of failure to publish or post notices.** Any failure to publish or post the notices provided for in this act, shall not invalidate an election held under the provisions of said act; but if any of the officers shall willfully fail to perform any of the duties required of him by this act, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished accordingly. (*Id.* § 24.)

*§ 35. **New election, when to be called.** If, from any legal cause, the whole election held under the provisions of this act for the organization of a county should be set aside by the court or judge thereof, and declared invalid, then the governor shall have all the authority provided in this act to call a new election, and said county shall be organized as in this act provided. (*Id.* § 25.)

*§ 36. **Sections of act repealed.** That sections one, two, and three, of chapter twenty-one of the Political Code, be, and the same are hereby, repealed. (*Id.* § 26.)

See the following special enactments defining the boundaries and organization of counties:

COUNTY.	SP. LAWS.	CHAP.	SEC.	COUNTY.	SP. LAWS.	CHAP.	SEC.
Adams	1885	3	1	Marshall	1885	12	2
Benson	1885	32	2	McHenry	1885	28	1
Billings	1885	3	1	McLean	1885	30	1
Blaine	1885	4	1	McPherson	1885	14	1
Burleigh	1885	24	1	Mercer	1885	31	1
Cavalier	1885	11	1	Oliver	1885	31	2
Day	1885	12	1	Ramsey	1885	32	1
Dunn	1885	3	3	Roberts	1885	22	1
Eddy	1885	15	1	Richland	1885	34	1
Edmunds	1885	14	2	Stanton	1885	38	1
Emmons	1885	16	3	Villard	1885	3	2
Foster	1885	15	2	Wallace	1885	3	4
Garfield	1885	21	1	Ward	1885	42	1
Grant	1885	22	1	Wells	1885	43	1
Kidder	1885	23	1	Winona	1885	16	1

See division into commissioners' districts:

COUNTY.	SP. LAWS.	CHAP.	SEC.	COUNTY.	SP. LAWS.	CHAP.	SEC.
Faulk	1885	33	1	Sargent	1885	33	1
Hyde	1885	33	1	Traill	1885	39	1
Richland	1885	33	1				

See, as to location and removal of county seats:

COUNTY.	SP. LAWS.	CHAP.	SEC.	COUNTY.	SP. LAWS.	CHAP.	SEC.
Faulk	1885	18	1	Sanborn	1885	35	1
La Moure	1885	27	1	Spink	1885	36	1
Roberts	1885	34	3	Turner	1885	40	1

See pages 354, 609, 610.

CHAPTER XLVII.

CONTESTING ELECTIONS.

*§ 24. **Contesting election to office — notice — pleading.** Any candidate or person claiming the right to hold an office contested, or any elector of the proper county desiring to contest the validity of an election, or the right of any person declared duly elected to any office in said county, shall give notice thereof in writing, to the person whose election he intends to contest, within twenty days after the canvass of the votes for such election, which notice shall be served in the same manner as a summons in a civil action; but if the person whose election is contested cannot be found, and shall have ceased to have a residence in said county or territory, then the notice shall be served by leaving said notice at the house where such person last resided in the territory of Dakota, and if no service, as above provided, can be made, or if no such residence can be found in the territory, the district court, or judge thereof, may expressly direct the manner of service, which notice of contest shall be in writing, and shall set forth the facts and grounds upon which the contestant relies in his contest, and may be verified as a pleading in a civil action. (*Sess. Laws* 1885, *c.* 54, § 1.)

*§ 25. **Time in which to answer—service of.** Any person upon whom the notice mentioned in the preceding section may be served, shall, within ten days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and state any

other grounds upon which he rests the validity of his election, and shall serve a copy of his answer in the contest; and all allegations set forth in the notice, and not denied in the answer, shall be taken as admitted, and said answer shall be served in the manner provided in the preceding section, except where the contestant appears by attorney, in which case the answer shall be served on the attorney in the manner provided by the Code of Civil Procedure. (*Id.* § 2.)

*§ 26. **Contest, by whom brought.** The contest provided for in this act may be brought by a candidate or person claiming said office, on his own motion, in his own name as plaintiff, but such contest cannot be brought by an elector without the notice is signed by the district attorney of the proper county, or, upon his refusal so to sign said notice of contest, the contest may be allowed by the court or judge thereof. (*Id.* § 3.)

*§ 27. **Trial of contest—term of court.** The judge of the district court of the subdivision in which said county is situated, in case no term of said court occurs within twenty days after the said answer is served, may appoint a term of said court (in said court) in said subdivision; but if a term of court occurs before that time in said subdivision, then the contest shall be tried at that term, unless otherwise ordered by the court or judge thereof. But the district court or judge, upon ten days' notice by either party, may try the case at the chambers of the judge at any place fixed by said court or judge in said district; or he may, on such application, or his own order, if the pleadings involve a question of fact, order such issues of fact to be tried before a jury, or refer the same as provided in this act, and postpone the trial until such trial can be had in any county in his district, regard being had to the speediest possible trial, for the interest of the parties and of the public. The question to be tried, if the issues are ordered to be tried by a jury, must be distinctly stated in the order of trial, and the county or subdivision must be designated, in the order, in which the trial shall be had. (*Id.* § 4.)

*§ 28. **Evidence — practice and procedure.** All testimony and depositions taken in contests, brought under the provisions of this act, shall be taken in the same manner as in civil actions, and depositions may be taken in more than one place at the same time, on leave of the court or judge thereof, and all matters relating to said contest shall be heard and tried by the district court, or judge thereof, in the manner that civil actions are tried, except as otherwise provided in this act; and the costs shall be taxed in the same manner as in civil actions, and the court or judge thereof shall have all the power of ordering amendments to notice, and answers, and other proceedings, as provided in the Code of Civil Procedure; and the court or judge thereof shall have power to enter all orders and final judgment in such contests, the same as in civil actions. (*Id.* § 5.)

*§ 29. **County seat, who may contest election for location of.** In any county where there is a vote for the selection, or for the re-

moving or changing of the county seat of such county, or changing the county lines of said county, any elector thereof, on leave of the district court or the judge, may contest the validity of such election as to the right of the point declared and selected as the county seat, or as to any county line declared to be established or changed by a vote. Such elector shall give notice, in writing, of such contest to the county commissioners, or a majority of them, of the county in which said vote was taken, by serving notice of contest, as provided in section one of this act, within thirty days after the result of said vote is canvassed. Said notice shall specify the points on which such election will be contested, and said notice shall be filed with the clerk of the district court where such court is held, for the judicial subdivision of which said county forms a part, within ten days after the service of said notice upon the county commissioners as aforesaid, and the said contest shall be tried and determined by the district court or judge thereof, or by a jury, as provided for in this act in the contest of county officers. Such county commissioners shall appear and defend said contest, and put in an answer to said notice, as is provided for in section 2; but if they fail to appear and defend said contest, any elector of said county, at any time before said trial, may, on leave of the court or judge, appear and defend said contest, and all testimony and depositions shall be taken in the same manner as in civil actions. (*Id.* § 6.)

*§ 30. **Trial—reference.** All contests brought under the provisions of this act may be referred by the court or judge thereof to a referee, as provided in the Code of Civil Procedure, and where the parties do not consent, the court or judge thereof may direct a reference of such contest. (*Id.* § 7.)

*§ 31. **Security for costs.** Any person bringing a contest under the provisions of this act must, before bringing the same, furnish good and sufficient surety for costs, as provided in the Code of Civil Procedure, and the obligation of such surety shall be completed by simply indorsing the notice of contest as security for the costs. (*Id.* § 8.)

*§ 32. **Appeal from final decision.** Appeals from any final judgment or decision of the district court or judge thereof shall be taken in the manner as provided for in the Code of Civil Procedure, except that the undertaking on appeal shall be in the sum fixed by the judge, not less than five hundred dollars, and shall be approved by the judge, or by the clerk of the court of the proper county or subdivision, under the direction of the judge. (*Id.* § 9.)

*§ 33. **Appeals—within what time.** Appeals to the supreme court in contests under the provisions of this act, must be taken within sixty days after the entry of final judgment, and the party appealing must immediately procure the transmission of the transcript and papers of appeal to the clerk of the supreme court. And the same may be brought on for hearing and determination before the supreme court at any time the said court shall be in session, upon ten days' notice from either party; and the same shall be heard and determined in a summary

manner. Such notice of hearing may be served during a term or in a vacation. (*Id.* § 10.)

*§ 34. **Remedies preserved.** This act shall not be construed to affect any of the remedies or rights of action or proceedings provided for in the Code of Civil Procedure. (*Id.* § 11.)

*§ 35. **Application of Code of Civil Procedure.** Except as otherwise provided in this act, the provisions of part two of the Code of Civil Procedure are applicable, and constitute the rules of practice in the proceedings mentioned in this act. (*Id.* § 12.)

*§ 36. **Procedure as to new trials and appeals.** The provisions of part two of the Code of Civil Procedure, relative to new trials and appeals, except in so far as they are inconsistent herewith, apply to the proceedings mentioned in this act. (*Id.* § 13.)

See page 618.

CHAPTER XLVIII.

LEGISLATIVE APPORTIONMENT.

§ 1. **First district.** That chapter seven of the session laws of eighteen hundred and eighty-three be amended to read as follows: The counties of Union, Clay, and Lincoln shall constitute the first council and representative district, and Union county shall be the senior county. (*As amended, Sess. Laws* 1885, *c.* 8, § 1.)

§ 2. **Second district.** The counties of Yankton, Hutchinson, and Turner shall constitute the second council and representative district, and shall be entitled to elect one member of the council and three members of the house of representatives, and Yankton county shall be the senior county. (*Id.* § 2.)

§ 3. **Third district.** The counties of Bon Homme, Douglas, and Charles Mix shall constitute the third council and representative district, and shall be entitled to elect one member of the council and one member of the house of representatives, and Bon Homme county shall be the senior county. (*Id* § 3.)

§ 4. **Fourth district.** The counties of Minnehaha, McCook, and Hanson shall constitute the fourth council and representative district, and Minnehaha shall be the senior county, and they shall be entitled to elect one member of the council and three members of the house of representatives. (*Id.* § 4.)

§ 5. **Fifth district.** The counties of Davidson, Aurora, and Brule shall constitute the fifth council and representative district, and the county of Davidson shall be the senior county. (*Id.* § 5.)

§ 6. **Sixth district.** The counties of Moody, Lake, and Miner shall constitute the sixth council and representative district, and Moody county shall be the senior county, and they shall be entitled to one member of the council and two members of the house of representatives. (*Id.* § 6.)

§ 7. **Seventh district.** The counties of Brookings, Kingsbury, Hamlin, and Deuel shall constitute the seventh council and representative district, and Brookings shall be the senior county. (*Id.* § 7.)

§ 8. **Eighth district.** The counties of Beadle, Sanborn, and Jerauld shall constitute the eighth council and representative district, and Beadle county shall be the senior county. (*Id.* § 8.)

§ 9. **Ninth district.** The counties of Spink and Clark shall constitute the ninth council and representative district, and Spink county shall be the senior county. (*Id.* § 9.)

§ 10. **Tenth district.** The counties of Hand, Faulk, Potter, Walworth, and Campbell shall constitute the tenth council and representative district, and Hand county shall be the senior county. (*Id.* § 10.)

§ 11. **Eleventh district.** The counties of Hyde, Hughes, Sully, and Buffalo shall constitute the eleventh council and representative district, and Hughes county shall be the senior county. (*Id.* § 11.)

§ 12. **Twelfth district.** The counties of Codington, Grant, Roberts, and Day shall constitute the twelfth council and representative district, and Grant shall be the senior county. (*Id.* § 12.)

§ 13. **Thirteenth district.** The counties of Marshall, Brown, Edmunds, and McPherson shall constitute the thirteenth council and representative district, and Brown shall be the senior county. (*Id.* § 13.)

§ 14. **Fourteenth district.** The counties of Fall River, Custer, Pennington, Lawrence, and Butte shall constitute the fourteenth council and representative district, and shall be entitled to elect two councilmen and three representatives, and the county of Lawrence shall be the senior county. (*Id.* § 14.)

§ 15. **Fifteenth district.** The counties of Dickey, Sargeant, McIntosh, and Richland shall constitute the fifteenth council and representative district, and Richland shall be the senior county. (*Id.* § 15.)

§ 16. **Sixteenth district.** The county of Cass shall constitute the sixteenth council and representative district. (*Id.* § 16.)

§ 17. **Seventeenth district.** The counties of Ransom, La Moure, Logan, and Barnes shall constitute the seventeenth council and representative district, and Barnes shall be the senior county. (*Id.* § 17.)

§ 18. **Eighteenth district.** The counties of Traill, Steele, and Griggs shall constitute the eighteenth council and representative district, and Traill shall be the senior county. (*Id.* § 18.)

§ 19. **Nineteenth district.** The county of Grand Forks shall constitute the nineteenth council and representative district. (*Id.* § 19.)

§ 20. **Twentieth district.** The counties of Walsh, Blaine, and Ramsey shall constitute the twentieth council and representative district, and Walsh shall be the senior county. (*Id.* § 20.)

§ 21. **Twenty-first district.** The counties of Pembina, Cavalier, Towner, Roulette, and Bottineau shall constitute the twenty-first council and representative district, and Pembina shall be the senior county. (*Id.* § 21.)

§ 22. **Twenty-second district.** The counties of Stutsman, Foster, Nelson, Wells, Benson, De Smet, Stanton, McHenry, and Eddy shall constitute the twenty-second council and representative district, and Stutsman shall be the senior county. (*Id.* § 22.)

§ 23. **Twenty-third district.** The counties of Emmons, Kidder, Burleigh, Sheridan, McLean, Mercer, Norton, Boreman, Hellinger, Bowman, Villard, Billings, Stark, Williams, Dunn, Oliver, McKenzie, Allred, Wallace, Garfield, Ward, Stevens, Wynn, Renville, Mountraille, Flannery, and Buford shall constitute the twenty-third council and representative district, and Burleigh shall be the senior county. (*Id.* § 23.)

§ 24. **Number of members for each district.** Each of the districts, except as otherwise provided for, shall be entitled to elect one member of the council and two members of the house of representatives. (*Id.* § 24.)

§ 25. **Repealing clause.** All acts or parts of acts in conflict with this act are hereby repealed. (*Id.* § 25.)

See pages 618–620.

CHAPTER LI.

INSANE.

ESTABLISHMENT OF NORTH DAKOTA HOSPITAL, AND GOVERNMENT OF INSANE HOSPITALS.

*§ 82. **North Dakota Hospital, where located.** The North Dakota Hospital for the Insane, until otherwise provided by law, is established as now located on parts of sections six and seven, in township one hundred and thirty-nine north, of range sixty-three west of the fifth principal meridian, in the county of Stutsman, near the city of Jamestown. (*Sess. Laws* 1885, *c.* 68, § 1.)

*§ 83. **Board of trustees—appointment of—term of office.** The board of trustees of each hospital for the insane shall consist of five members, and the governor, by and with the consent of the council, shall, at this session of the legislative assembly of the territory of Dakota, appoint five persons as trustees, respectively, for the North Dakota Hospital for the Insane, and five persons as trustees for the Dakota Hospital for the Insane. Three persons of each board shall be residents, respectively, of the counties in which the hospital for the insane are situated, as trustees of such hospital, each of whom shall hold their offices respectively for the term of two years, and until their successors are appointed and qual-

ified, except to fill vacancies, which shall only extend to the end of the next session of the legislature. In case of any vacancy, occasioned by the removal from the territory by such trustee, or death, resignation, or non-acceptance of the office, the governor shall immediately fill such vacancy, and unless the person so appointed shall accept the office within twenty days, the governor shall immediately thereafter appoint some other person; and the governor, at each session of the legislature hereafter, shall appoint the trustees for each of said hospitals for the term of two years, as in this section provided, and each of said members of the said board shall, before entering upon the duties of his office, take and subscribe the oath of office provided by law. (*Id.* § 2.)

*§ 84. **Object and purposes of hospitals.** The object of the said hospitals for the insane shall be to receive and care for all insane or distracted persons residing within its jurisdiction, as limited and described in this act, who may be committed to their care in accordance with law, and to furnish all needed medical treatment, seclusion, rest, restraint, attendance, amusement, occupation, and support which may tend to restore their health, and recover them from insanity, or to alleviate their suffering: *provided*, that the trustees shall have power to discharge patients, and to refuse additional applications for admission to the hospital under their care, whenever, in their judgment, the interests of the insane demand such discharge or refusal; and that, in the admission and attention of patients, curables and recent cases shall have the preference over cases of long standing, and that violent, dangerous, or otherwise troublesome cases shall have preference over those of an opposite description. (*Id.* § 3.)

*§ 85. **Trustees may hold property—power to contract.** The board of trustees of each hospital may take, in the name of the territory, and hold in trust for the hospitals, any lands conveyed or derived, and any money or personal property given or bequeathed, to be applied for any purpose connected with either institution: *provided*, they shall not have power to bind the territory by any contract beyond the amount of the appropriation which may at the time have been made for the purpose expressed in the contract, nor to sell or convey any part of the real estate belonging to said hospitals, without the consent of the legislature, except that they may release any mortgage or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorize such conveyance. No trustee or officer of either hospital shall be, either directly or indirectly, interested in any contract for the purchase of building material, supplies, or other articles for the use of the institution. They shall provide and keep a seal, upon which shall be inscribed the name of the hospital, with such other words and devices as they may deem appropriate. (*Id.* § 4.)

*§ 86. **Compensation of—warrants on treasurer.** The trustees shall be paid at the rate of three dollars per day for the time necessarily incurred in the discharge of their official duties, and five cents per mile going and returning, necessarily traveled in the discharge of said duties. Upon the presentation of the proper vouchers, contain-

ing an itemized statement of the sum due each trustee for services rendered, and for mileage, duly signed by the president of the board of trustees and countersigned by the secretary of said board, the territorial auditor shall draw his warrant upon the territorial treasurer therefor, to be paid out of the territorial treasury. (*Id.* § 5.)

*§ 87. **To elect president and secretary, record proceedings, and make reports thereof.** The trustees of each board shall elect a president and secretary from their own number, whose term of office shall be for one year, or until said board shall elect their successors. They shall make a record of their proceedings at all meetings in a book kept for that purpose; and at their annual meeting, next preceding the regular session of the legislature, they shall each make a report to the governor of the condition and wants of their respective hospitals, which shall be accompanied by a full and accurate report of the superintendent, which shall show the annual cost *per capita* of the inmates, and the per cent. of discharges and recoveries, and a detailed account of all moneys received and paid out by the steward, and shall have not less than five hundred copies of said report printed. (*Id.* § 6.)

*§ 88. **Fiscal year—annual and special meetings.** The fiscal year of the hospital shall close on the thirtieth day of November each year, and the annual meeting of the board of trustees, respectively, shall be held on the first Wednesday of December thereafter, at the hospital. Special meetings for the appointment or removal of resident officers, or for the transaction of general business, may be held upon the written request of the president or any three members of the board. Three members of the board shall constitute a quorum for the transaction of business. (*Id.* § 7.)

*§ 89. **To appoint officers, adopt rules — salaries, how paid.** The board of trustees shall have general control and management of their hospital; shall make all by-laws, rules, and regulations necessary for the government of the same, not inconsistent with the laws of the territory; they shall appoint a superintendent, who shall be a physician of acknowledged skill and ability, a graduate of a reputable regular medical college, and of good moral character; one or more assistant physicians, who shall be of like skill and ability, and a graduate of a medical college, as aforesaid, when the superintendent shall deem such appointment necessary; a steward, and matron, all of whom shall be styled the resident officers of the hospital, and shall reside therein, and shall be governed by the laws and by-laws established for the same. The salaries of the resident officers of the hospital for the insane shall be per annum as follows: Superintendent, two thousand dollars; steward, one thousand two hundred dollars; assistant physicians, one thousand dollars; and matron, five hundred dollars. These salaries shall be audited and paid monthly out of the territorial treasury, upon the presentation of the proper voucher therefor, duly verified, which voucher shall be approved by the president of the board of trustees and countersigned by the secretary. (*Id.* § 8.)

*§ 90. **Visits and examinations.** One or more of the trustees shall visit his hospital monthly, and the president of the board, with the superintendent, shall make monthly examinations of the accounts of the steward, and certify their approval on the same page with his monthly balance. (*Id.* § 9.)

*§ 91. **Superintendent—bond—duties of.** The superintendent of the hospital shall, before entering upon the duties of his office, give a bond to the territory of Dakota, in the penal sum of twenty-five hundred dollars, conditioned that he will faithfully and impartially discharge the duties of his office according to law and the by-laws of said hospital, to be approved by said board, and take and subscribe an oath faithfully and diligently to discharge the duties required of him by law and the by-laws of the board of trustees, which bond and oath shall be filed with the treasurer of the territory; he shall be the chief executive officer of the hospital, and have entire control of the medical, moral, and dietetic treatment of the patients; he shall employ all employes and assistants necessarily connected with the institution below the grade designated as officers in section seven in this act; and may discharge any employe at will, and suspend any resident officers of the hospital except steward, being responsible to the board for the proper exercise of that duty in regard to officers. (*Id.* § 10.)

*§ 92. **Duties of steward.** The steward shall keep the accounts, pay those employed in and about his hospital, and have a personal superintendence of the farm, garden, and grounds, and perform such other duties as may be assigned him, under the by-laws of the hospital, under the directions of the board of trustees. He shall purchase all supplies for the hospital, wherever the best grade of articles, in suitable quantity, can be bought at the lowest price, and, so far as practicable, in large rather than small quantities, and shall, if in his judgment it can be done to advantage, advertise for proposals for staple supplies, such as meat, flour, sugar, coffee, tea, fuel, and other staple articles, and make contracts for the furnishing of the same in bulk, or in quantity as may be needed for use. (*Id.* § 11.)

*§ 93. **Steward to keep accounts and render monthly statements.** The steward shall keep an accurate account of all receipts and expenditures in detail, which shall be open to the inspection of the superintendent and board of trustees, and these accounts shall be carefully balanced on or before the fifteenth day of each month, and closed biennially on the thirtieth day of November, next preceding each regular session of the legislature. There shall be provided and submitted, for the inspection of the superintendent and board of trustees, on or before the fifteenth day of each month, an original and duplicate balance-sheet, which balance-sheet shall show the balance of appropriations in the territorial treasury to be applied to the maintenance of the patients, or to the general use of the hospital, or from any source whatever. These balance-sheets shall also show a detailed statement of all receipts and disbursements during the month, and to what appropriation each belongs,

together with the name of each payee, and the price paid. There shall be submitted, with the balance-sheet, the original bills of purchase, vouchers for the same, and receipts of all other disbursements, of whatever kind, which bills of purchase, vouchers, and receipts shall have indorsed on the back of each the signatures attached thereto, with the month and year of payment. After the original and duplicate balance-sheets have been indorsed as correct by the superintendent and president of the board of trustees, the steward shall, within five days thereafter, file the original balance-sheet in the office of the superintendent; and the duplicates thereof, with the original bills of purchase, vouchers, and receipts pertaining thereto, he shall file in the office of the territorial auditor, and upon the presentation of the monthly balance-sheet, properly signed and indorsed as correct by the president of the board of trustees, together with the original bills of purchase, vouchers, and receipts pertaining thereto, the territorial auditor shall draw his warrant upon the territorial treasurer for the respective amounts therein stated, from the appropriations to which they are properly chargeable. (*Id.* § 12.)

*§ 94. **Construction of new buildings—authority of trustees.** Whenever any additional building is to be erected, or extensions, or alterations, or repairs are to be made, in connection with either hospital, the board of trustees shall have authority to procure all necessary plans, drawings, and specifications for such buildings, alterations, or repairs; to advertise for proposals for the erection and completion thereof, and to accept such bid as may seem to them most advantageous,—the contractor, in every case, to give adequate security for the faithful performance of his contract; to appoint and discharge a building superintendent, who shall superintend the work and perform such other duties in that respect as they may require, and to fix his compensation, and to examine and certify to the correctness of his estimates and accounts for work under the contract, and of the superintendent and employes. (*Id.* § 13.)

*§ 95. **Special appropriation, when drawn and expended.** No portion of any special appropriation for the erection of any building, or for the doing of any work, or for any purpose other than ordinary expenses, shall be drawn from the territorial treasury in advance of the work done or materials furnished, and then only upon proper estimates thereof, approved by the trustees, and no portion of any appropriation for any purpose shall be drawn from the treasury before it shall be required for the purpose for which it is made; and no appropriation which is or may be made for one purpose shall be drawn or used for any other purpose; and if, at any time hereafter, the sum appropriated by the legislative assembly for any specific purpose shall be found insufficient to complete and accomplish the purpose for which said appropriation is made, then no part of said sum so appropriated shall be expended or drawn from the territorial treasury, nor shall any liability on the part of the territory be created on account of said appropriation. (*Id.* § 14.)

*§ 96. **Treatment to be gratuitous — charge, when may be made.** All residents of the territory of Dakota who are, or may

become, inmates of either hospital, shall receive their board, tuition, and treatment free of charge during their stay. The residents of other states or territories may be admitted to said hospitals upon the payment of the first cost of said board, tuition, and treatment, as provided by the by-laws adopted by the board of trustees: *provided*, that no resident of another state or territory shall be received or retained to the exclusion of any resident of any part of the territory of Dakota; and *provided, further*, that should any inmate be unwilling to accept gratuitous board, treatment, or tuition, then the superintendent of the hospital is hereby authorized to receive pay therefor, and is required to account for the same, in an itemized monthly statement to the trustees, as donations, to be duly credited to the persons from whom they were received; and if the superintendent shall receive any moneys for the purpose of furnishing extra attention and comforts to any inmates of the hospital, he shall account for the same, and for the expenditures, in like manner, to the trustees. (*Id.* § 15.)

*§ 97. **Commissioners of insanity—duties of.** As soon as the North Dakota Hospital for the Insane shall be ready for the reception of patients, the board of commissioners of insanity, constituted under chapter twenty-three of the laws of eighteen hundred and seventy-nine, in each organized county lying north of the forty-sixth parallel of latitude, and in each county of which the greater portion shall be north of said parallel, shall transact all business arising under said chapter twenty-three, with the trustees and officers of the said North Dakota Hospital for the Insane. The boards of commissioners of all organized counties south of the above-described territory shall transact all business with the said Dakota Hospital for the Insane at Yankton; and the territory of Dakota is hereby divided into two districts, as above described, for the purposes of this act, and shall be known as the district of South Dakota [and] the district of North Dakota; and the patients from the district of South Dakota shall be taken to and cared for at the said Dakota Hospital for the Insane, and the patients from the district of North Dakota shall be taken to and cared for at the said North Dakota Hospital for the Insane; and all patients belonging to said Northern district, under treatment at the Dakota Hospital for the Insane, at the time said North Dakota Hospital shall be ready for patients, as aforesaid, shall be transferred to said North Dakota Hospital at the expense of the last-named institution. (*Id.* § 16.)

*§ 98. **Repealing clause.** Chapter eighty-three of the laws of eighteen hundred and eighty-one, and all acts and parts of acts in conflict with the provisions of this act are hereby repealed. (*Id.* § 17.)

*§ 99. **Appropriation.** There is hereby appropriated, out of the funds provided for in this act, the sums hereinafter mentioned, for the erection of buildings on the grounds of the North Dakota Hospital for the Insane near Jamestown, Dakota, as follows: For ward building, kitchen, bakery, dining-room, laundry, boiler-house, boiler, fixtures, machinery, furniture, steam-heating, offices, and residence, the sum of sixty-three thousand dollars. Officers' residences not to exceed in cost

four thousand dollars; section of officers' building not to exceed in cost five thousand dollars; laundry not to exceed three thousand dollars; barn not to exceed in cost three thousand dollars; sewerage, two thousand dollars; water supply, four thousand dollars; gas, two thousand dollars. (*Sess. Laws* 1885, *c*. 24, § 1.)

*§ 100. **Bonds to be issued.** To provide such funds, bonds of this territory shall be issued to the amount of not to exceed sixty-three thousand dollars, in denominations of five hundred dollars each, bearing date the first day of May, eighteen hundred and eighty-five, with interest payable semi-annually, at some place in New York city, to be specified in said bonds, on the first day of July and January of each year, at the rate of six per cent. per annum, running twenty years, and payable at the option of the territory, at any time after five years from the date of the same. (*Id.* § 2.)

*§ 101. **Bonds, how executed.** Such bonds shall be executed for the territory, and under the seal thereof, by the governor and treasurer, and shall be attested by the secretary, and shall be negotiated by the treasurer of the territory. (*Id.* § 3.)

*§ 102. **Proposals for bonds.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, after giving notice for thirty days in two newspapers of general circulation, one of which shall be published in the territory and the other in the city of New York, and said bonds shall be sold to the highest bidder, for cash, at not less than par. (*Id.* § 4.)

*§ 103. **Tax for payment of bonds.** For the purpose of prompt payment of principal and interest of the bonds herein provided, there shall be levied by the territorial board or equalization, at the time the other taxes are levied and collected, in the same manner as other territorial taxes are collected, such sums as shall be sufficient to pay such interest, and the exchange thereon, and after ten years from the first day of May, eighteen hundred and eighty-five, in addition thereto, a sinking-fund tax shall be annually levied, sufficient to retire and pay said bonds at their maturity. And it shall be the duty of the territorial treasurer to pay promptly, on the first days of January and July of each year, such interest as shall be due, and to purchase said bonds at not more than their par value, and retire and cancel the same, with the sinking-fund tax, as fast as the same shall be received; and no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 5.)

*§ 104. **Payment of interest.** If, for any reason, the territorial treasurer shall not have in his hands sufficient of the funds herein provided to pay either principal or interest upon such bonds when due, he shall pay such interest or principal out of any other unappropriated fund belonging to the territory; and there is hereby appropriated and set apart, out of the general fund belonging to the territory, a sum sufficient to pay such interest on said bonds as may become due, before the funds and tax herein provided can be made available, and it shall be the duty

of said treasurer to pay said interest promptly, at the time it falls due, out of said funds. (*Id.* § 6.)

*§ 105. **Replacing funds.** All moneys belonging to the general territorial fund, applied by said treasurer in payment of either principal or interest of said bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 7.)

*§ 106. **Plans and specifications.** The board of trustees of the Northern Dakota Hospital for the Insane, near Jamestown, shall, immediately after passage and approval of this act, prepare, or cause to be prepared, plans and specifications for building the additions and improvements enumerated in section one of this act, and after the same shall have been adopted and approved by them and the governor of the territory, the said board of trustees shall cause said plans and specifications to be filed with their secretary, and it shall be the duty of said board, within twenty days thereafter, to give public notice, which notice shall be inserted for thirty days in two newspapers published in the territory, and of general circulation therein, and in two newspapers published in other states, and that on a day specified in such notice they will receive sealed proposals at the office at the hospital, near Jamestown, for the building of the said additions and improvements to the Northern Dakota Hospital for the Insane, near Jamestown, Dakota, according to plans and specifications aforesaid, which shall be open for inspection of bidders at the office of the hospital for the insane, or at such place in the city of Jamestown as the board may designate. (*Id.* § 8.)

*§ 107. **Total cost.** The total cost of said buildings and improvements shall not exceed sixty-three thousand dollars. (*Id.* § 9.)

*§ 108. **Awarding contract.** On the day advertised for the opening of said proposals for erecting and completing the said additions and improvements, the board of trustees shall proceed to award the contract or contracts, reserving the right to reject any or all bids, if, in their judgment, they are too high, and may again advertise for proposals, or accept such bids as in their judgment may be for the best interests of the institution. (*Id.* § 10.)

*§ 109. **How built.** The walls of said buildings shall be constructed of good brick or stone, and said buildings shall be made as nearly fire-proof as practicable. (*Id.* § 11.)

*§ 110. **Partial payments.** The board of trustees, as the work progresses, shall, on application of the contractor or contractors, certify to the territorial auditor the value of the work done on the additions and improvements at the time, and, on such certified statement, the auditor shall issue a warrant on the territorial treasurer for a sum not exceeding eighty-five per cent. of the value of the work so certified to have been done on said additions and improvements, at the time of making such application, including amount of all warrants previously issued in part payment of such work: *provided*, that no part of the funds herein appropriated for the construction of said additions or improvements shall be paid, or value of work certified by the trustees, until at least one-fourth

of the work has been completed by the contractor or contractors. (*Id.* § 12.)

*§ 111. **Material to be of good quality.** The contract or contracts aforesaid shall stipulate that all material shall be of good quality, and that the work shall be performed in a good, workmanlike manner, and these stipulations shall be enforced. (*Id.* § 13.)

*§ 112. **Final payment.** The balance due the contractor or contractors, under the contract or contracts, shall be paid on the completion of the additions or improvements, and their acceptance and approval by the board of trustees. (*Id.* § 14.)

*§ 113. **In case of division of the territory.** In case of division of [the] territory, that part of the territory of Dakota in which said hospital for the insane is located, shall, on the division of the territory, assume and pay all bonds and coupons issued and then existing on account of the construction of the said hospital building. (*Id.* § 15.)

See page 687.

CHAPTER LIII.

PENITENTIARY.

PART I.—PENITENTIARY AT SIOUX FALLS.

*§ 2. **Appointment of directors.** Repealed. (*Sess. Laws* 1885, *c.* 123, § 1.)

*§ 2*a*. **Appointment of directors.** The penitentiary at Sioux Falls, Dakota territory, shall be under the direction and government of five directors, who shall be appointed by the governor of the territory, with the advice and consent of the council; said directors to hold their office for the term of two years, or until their successors are appointed and qualified; and in case a vacancy shall occur in the position of director, such vacancy shall be filled by the other members of the board, who shall vote by ballot in filling such vacancy, which person so elected shall hold his office until the end of the next legislative assembly thereafter, or until his successor is elected and qualified. (*As amended, Id.* § 2.)

See page 691.

*§ 12. **Officers of prison.** Amended so as to read as follows: "The officers of the prison shall consist of five directors, one warden, one deputy-warden, one gate-keeper, one turnkey, and such guards, overseers, and laborers as may be necessary: *provided, however,* that the present directors shall continue to serve until their successors under this act are appointed and qualified." (*Id.* § 3.)

See page 693.

UNITED STATES CONVICTS.

*§ 48*a*. **Directors may make contract.** The directors of the penitentiary at Sioux Falls are hereby authorized to rent the United States wing of the penitentiary at Sioux Falls upon such terms and conditions as they may deem for the best interests of the territory. Said directors are also authorized to contract with the United States for the support and care of United States prisoners at said penitentiary. (*Sess. Laws* 1885, *c.* 124, § 1.)

See page 697.

CHAPTER LIV.

DEAF AND DUMB.

FUNDS FOR DORMITORY AND COMPLETION OF BUILDING.

*§ 19. **Provision for erection of dormitory.** For the purpose of providing funds to pay the cost of erecting a dormitory, and furnishing the building and grounds of the Dakota School for Deaf Mutes at Sioux Falls, Dakota territory, the territorial treasurer is hereby authorized and empowered, and it is made his duty, to prepare for issue sixteen thousand dollars of territorial bonds, running for a term of twenty years, and payable at the option of the territory after ten years, and bearing interest at the rate of six per cent. per annum, with coupons attached, made payable semi-annually on the first day of July and January, each year. Such bonds shall be executed, under the seal of the territory, by the governor and treasurer of the territory. (*Sess. Laws* 1885, *c.* 23, § 1.)

*§ 20. **Provisions for sale of bonds.** It shall be the duty of the treasurer to receive sealed proposals for the purchase of said bonds, and upon the request of the board of trustees of said school he shall give public notice for thirty days in two newspapers of general circulation, one of which shall be published in the city of New York, and said bonds shall be sold to the highest bidder for cash: *provided*, that said bonds shall not be sold at less than par value. (*Id.* § 2.)

*§ 21. **Tax—payment of interest.** For the purpose of the prompt payment of principal and interest of the bonds herein provided for, there shall be levied by the territorial board of equalization, at the time the other taxes are levied, and collected in the same manner as other territorial taxes are collected, such sums as shall be sufficient to pay such interest and exchange thereon, and after nine years from the first day of May, eighteen hundred and eighty-five, in addition thereto, a sinking-fund tax shall be annually levied, sufficient to retire and pay such bonds at their maturity; and it shall be the duty of the territorial treasurer to pay promptly, on the first days of July and January of each year, such interest as shall be due, and to purchase said bonds at their

market value, and retire and cancel the same with the sinking-fund tax, as fast as the same be received; and no tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose. (*Id.* § 3.)

*§ 22. **Payment of interest out of general funds.** If, for any reason, the territorial treasurer shall not have in his hands sufficient funds herein provided to pay the interest upon such bonds when due, he shall pay such interest out of any other unappropriated funds belonging to the territory, and there is hereby appropriated and set apart, out of the general funds belonging to the territory, a sum sufficient to pay such interest on said bonds as may become due before the funds and taxes therein provided for can be made available; and it shall be the duty of said treasurer to pay said interest promptly, at the time it falls due, out of said funds. (*Id.* § 4.)

*§ 23. **Moneys to be replaced.** All moneys belonging to the general territorial fund, applied by said treasurer in payment of the interest of said bonds, shall be replaced from the special tax levied to pay the same. (*Id.* § 5.)

*§ 24. **Construction of building.** And the board of trustees of said school are hereby empowered and directed to commence the construction of said building, and, after the same is completed, to furnish the same; said building to be of stone. Said board of trustees shall make a full and detailed report of their expenditures and action, under this act, to the next territorial legislative assembly. (*Id.* § 6.)

*§ 25. **Appropriation of funds — purposes of.** There is hereby appropriated, out of the territorial treasury, all the funds realized by the sale of the bonds provided for in this act; said funds to be expended for the following purposes: For building a dormitory and furnishing the same, twelve thousand dollars; for deficiency, amount due on main building, two hundred dollars; for steam-heating and plumbing, twenty-five hundred dollars; for sewerage, eight hundred dollars; for fencing and improving grounds, five hundred dollars. And it shall be the duty of the auditor of the territory, upon the application of the board of trustees, or a majority thereof, of said school for deaf mutes, to draw on the territorial treasurer for the purpose of constructing said dormitory, and carrying out the other provisions of this act. (*Id.* § 7.)

*§ 26. **In case of division of territory.** In case of a division of the territory of Dakota, that part of said territory in which said deaf mute school is situated shall assume and pay such bonds and coupons which are issued by virtue of this act, at maturity. (*Id.* § 8.)

EDUCATION OF DEAF, DUMB, AND BLIND.

*§ 27. **Governor to make contract for care of deaf, etc.** The governor of this territory is authorized, and it is hereby made his duty, to enter into a contract, for not more than five years at one time, with the proper authorities of the state of Iowa, Minnesota, or Nebraska,

where the most favorable contract can be made, keeping in view economy and the welfare of the patients, to keep, maintain, instruct, and educate any deaf, dumb, or blind person who now is or may hereafter become a *bona fide* resident of the territory of Dakota. (*Sess. Laws* 1879, *c.* 13, § 1.)

*§ 28. **Declared to be deaf and dumb institution of Dakota.** After such contract is made, the institution of the state, with which such contract is made, shall be the institution for the deaf, dumb, or blind of this territory the same as though such institution was located within the territory. (*Id.* § 2.)

*§ 29. **County superintendent to report deaf, dumb, and blind.** Each county superintendent of public schools shall report to the county commissioners of his county, at any regular meeting of said commissioners, the name, age, name of parent or guardian, and post-office address of every deaf, dumb, and blind person, and all such persons as may be too deaf or blind to acquire an education in the common schools, between the age of five and twenty-one years, residing in his county. (*Id.* § 3.)

*§ 30. **Duty of county commissioners.** It shall be the duty of the county commissioners, when they have been notified that there are any deaf, dumb, or blind persons in their county, who are entitled to the benefits of an institution for the support and education of the deaf dumb, or blind, to at once report the name, age, and residence of such persons in their county to the governor of this territory. (*Id.* § 4.)

*§ 31. **Who may be educated at expense of territory.** Every blind person of the territory, and all such as may be too blind to acquire an education in the common schools, of suitable capacity, between the ages of five and twenty-one years, shall be entitled to receive an education for at least eight years, at the expense of the territory of Dakota, at the said institution for the support and education of the blind: *provided*, that the time that any pupil or pupils have spent in any institution for the education of the blind, shall be deducted from the eight years above specified; *provided*, *further*, that whenever the parent, guardian, or other person, responsible for the support of such blind person, shall be able so to do, such parent, guardian, or other person shall defray the expense of the support and education of such blind person at such institution, and the board of county commissioners shall be the judges of the ability of the person responsible for such support. (*As amended*, *Sess. Laws* 1885, *c.* 21, § 1.)

*§ 32. **Proceedings to entitle persons to benefits of this act.** In order to entitle any deaf, dumb, or blind person to the benefits of this act, it shall be necessary for such person to obtain a certificate of the superintendent of schools of the county in which such person resides, that such person (giving name, age, and residence) is deaf, dumb, or blind, or too deaf or blind to acquire an education in the common schools, and is entitled to the benefit of such an institution, which certificate shall be approved by the governor; and upon presentation of

such certificate, and an order from the governor of this territory to the authorities of the institution to admit such person, specifying the time for which he or she shall be admitted under the existing contract, such person shall be admitted into such institution and receive all the benefits of the same. (*Sess. Laws* 1879, *c.* 13, § 6.)

*§ 33. **Authorities of asylum to notify governor.** The authorities of such institutions, when they receive any such person from this territory under the contract, shall at once notify the governor of this territory, giving name of person so admitted, the date when admitted, and the time for which such persons are admitted. (*Id.* § 7.)

*§ 34. **Auditor authorized to audit accounts.** It shall be the duty of the auditor of this territory to audit all accounts presented by the authorities of the institution for the support of the deaf, dumb, or blind persons of the state with which the governor has made a contract, as provided in section one of this act, under such regulations as such auditor may prescribe, and to draw his warrant or warrants on the territorial treasurer for the amount due such institution. (*Id.* § 8.)

See page 715.

CHAPTER LVI.

LAND DRAINAGE.

*§ 1. **Officers of county or town may cause construction of drain.** Amended by inserting the words "or special" after the word "regular," where it occurs in the fourth line of said section. (*Sess. Laws* 1885, *c.* 47, § 1.)

*§ 2. **Petition — appointment of receivers — duties, etc.** Amended by striking out the following words in the fifteenth line of said section: "if in regular session or;" also by inserting after the word "any," in said line, the words "special or;" also by inserting the word "for" after the word "provided" in line forty-one of said section. (*Id.* § 2.)

See page 716.

*§ 4. **Lands benefited to pay costs.** Amended by striking out the word "construed" in line seven, and inserting the word "constructed" in lieu thereof. (*Id.* § 3.)

*§ 5. **Viewers—discretionary powers.** Amended by inserting the word "and" after the word "outlet" in line eleven. (*Id.* § 4.)

*§ 6. **Damages.** Amended by striking out the word "in" after the word "proportion," where it occurs in the fifth line of said section. (*Id.* § 5.)

See pages 717, 718.

*§ 8. **Viewers, when to make report, etc.** Said viewers shall, after having met at the time and place specified in the order issued to them by the county clerk or township clerk, proceed immediately to perform their said duty, unless, for good and sufficient reasons, it is necessary to adjourn, and said reasons shall be stated in full in their report, which shall be made out and filed with the county clerk, or township clerk, at least two weeks before the next regular meeting of said board thereafter: *provided*, that if the viewers shall find, upon examination, that the proposed ditch or drain or water-course is not of public benefit or utility, they shall so report, and their report need only state such facts. (*As amended*, *Id.* § 6.)

*§ 9. **Duty of clerk when report is filed.** It shall be the duty of the county clerk, or township clerk, when said report is filed, if it be in favor of said work, to give public notice of the pendency of such petition, and the time and place set for the hearing thereof, by publication, for three successive weeks prior to said hearing, in a newspaper, if there be one, published in the county. If no newspaper be published in the county, then notices shall be posted in three or more public places in the township or townships where the proposed work is to be done, at least three weeks prior to the day set for said hearing. Said notice shall briefly state where said ditch, drain, or water-course commences, through whose land it will pass, and where it will terminate; together with the names of the owners of the land that will be affected thereby, so far as these can be ascertained with reasonable diligence. (*Id.* § 7.)

*§ 10. **When drain shall be ordered.** Said board of commissioners or board of supervisors, at the time set for the hearing of said petition, shall, if no remonstrance be filed, proceed to hear said petition, and consider the report of the viewers. If the report be in favor of the proposed work, and said work will be of public utility, or conducive to public health and convenience, they shall establish the same as specified in the report; but if the viewers report against the proposed work, the board shall dismiss the petition, and tax the cost as hereinafter provided. When damages are awarded to any person, persons, or corporations, as provided in this act, the board of commissioners or board of supervisors shall order the same to be paid out of the county or township treasury to the person, persons, or corporation entitled thereto. (*Id.* § 8.)

*§ 11. **Remonstrance.** Amended by striking out the word "viewers," in the second place where it occurs in the twelfth line, and inserting the words "the reviewers" in lieu thereof. (*Sess. Laws* 1885, *c.* 47, § 9.)

*§ 12. **Reviewers, duty of.** Amended by inserting the word "if" after the words "except that," in line six, and inserting the word "the" after the word "find," in line seven; also by striking out the word "reviewers" in line twelve, and inserting the word "viewers" in lieu thereof. (*Id.* § 10.)

*§ 13. **Proceedings on report of reviewers.** Amended by striking out the word "free" in line nine, and inserting the word "fee" in lieu thereof. (*Id.* § 11.)

See pages 718–720.

*§ 16. **Proceedings after adoption of report.** Amended by inserting the word "in" after the word "time," in line five; also amend section seventeen by inserting the words "or township board" after the word "commissioners," in line eighteen of said section. (*Id.* § 12.)

See page 720.

*§ 20. **Reselling.** Amended by inserting the word "failing" after the word "job," in line one. (*Id.* § 13.)

*§ 21. **Inspection of work.** Amended by striking out all between the word "land," in line twelve, and the word "such," in line fourteen; also by inserting the word "person" after the words "to the," in line twenty-six. (*Id.* § 14.)

*§ 22. **Repairs and cleaning drains and ditches.** Stricken out. (*Id.* § 15.)

*§ 23. **Same.** Amended by striking out the word "same" in first line, and inserting in lieu thereof the following words: "Repairs and cleaning drains and ditches;" also insert after the word "supervisor" the following words, "of roads," in line two. (*Id.* § 16.)

*§ 24. **When ditch crosses two or more townships or counties.** Amended by inserting the word "petition" between the words "the" and "shall," in fourth line, and in fifth line strike out the word "will" after the word "will;" and in line thirteen by striking out the word "certain" and inserting the word "certified" in lieu thereof. (*Id.* § 17.)

See pages 721–723.

*§ 26. **Repairs of joint ditches.** Amended by striking out the word "but" in third line of said section. (*Id.* § 18.)

*§ 27. **Remonstrance in case of joint ditches.** Amended by striking out the words "in which," where they occur in the fourth line; also strike out the words "shall immediately," where they occur in the tenth line, after the word "deeds;" also by striking out the word "may," where it occurs in the twenty-third line; also by striking out the word "to" after the word "to," where it occurs in the twenty-seventh line. (*Id.* § 19.)

*§ 28. **Highway or railroad benefited to pay proportion.** Amended by inserting the word "or" after the word "county," in line seven; also by striking out the words "or railroad" after the words "or railroad," in line eight; also by inserting the word "private" after the word "as," in the last line of said section. (*Id.* § 20.)

See pages 723, 724.

*§ 31. **Compensation.** Amended by striking out the word "in" after the word "employed," in last line of said section. (*Id.* § 21.)

See page 724.

*§ 33. **Definition of terms.** Stricken out. (*Id.* § 22.)

*§ 34. **Assessment to be a lien.** Amended by inserting the word "be" after the word "shall," in line seven. (*Id.* § 23.) And add to end of section: "*Provided*, that the board of county commissioners are hereby authorized to issue a warrant upon the county treasurer, payable out of the general funds, or from any special fund not overdrawn, if they so deem desirable, and accept an assignment of said certificates, which shall be placed in the hands of the county treasurer, and collected with, and in the same manner as, other taxes levied against said property benefited, and when paid shall be credited by said treasurer up to such funds as has been debited by the issuance of said warrant." (*Sess. Laws* 1885, *c.* 48, § 1.)

*§ 35. **Counties exempted.** Stricken out. (*Sess. Laws* 1885, *c.* 47, § 24.)

*§ 36. **Repealing clause.** All acts or parts of acts in conflict with this act are hereby repealed. (*Id.* § 25.)

See page 725.

CHAPTER LVII.

COUNTY AUDITOR.

*§ 19. **Continuance in office.** In the counties of Pembina, Walsh, Grand Forks, Lincoln, Traill and Cass, wherein county auditors have been heretofore elected in pursuance of chapter 1 of the Special Laws of 1883, the county auditors so elected shall continue to hold their respective offices until the general election of county officers in November, eighteen hundred and eighty-six. (*Sp. Laws* 1885, *c.* 9, § 1.)

*§ 20. **Where act to take effect.** This act shall apply and take effect only in such of the above counties as have elected auditors for the term of two years at the annual election of eighteen hundred and eighty-three. (*Id.* § 2.)

*§ 21. **Requalification for office.** All auditors elected at the annual election of eighteen hundred and eighty-three, who have taken oath and given bond for a term of two years only from the time of their said election, shall, at the expiration of said time for which they were elected, again qualify for the term of one year, or until the term of office hereby extended expires. (*Id.* § 3.)

*§ 22. **Repeal.** All acts or parts of acts in conflict with this act are hereby repealed. (*Id.* § 4.)

*§ 23. **Office created in certain counties.** That chapter one of the Special Laws of eighteen hundred and eighty-three, approved March ninth, eighteen hundred and eighty-three, be amended so as to create the office of county auditor in the counties of Brown, Day, Grant, Codington, Deuel, Sargent, Ransom, and Dickey. (*Sp. Laws* 1885, *c.* 2, § 1.)

*§ 24. **Term of office.** The county auditors appointed under the provisions of this act shall hold their offices until their successors are duly elected in eighteen hundred and eighty-six, and qualified under the general laws of the territory, the same as other county officers. (*Sp. Laws* 1885, *c.* 2, § 2.)

*§ 25. **Register of deeds when not eligible.** In the counties above mentioned, the register of deeds shall not hold the office of county auditor during the time in which he is register of deeds. (*Id.* § 3.)

*§ 26. **Appointment by county commissioners.** The board of county commissioners, county treasurer, and judge of probate, respectively, of the counties of Spink, Stutsman, Barnes, Morton, Burleigh, Nelson, Brookings, and Miner, are hereby authorized to appoint an auditor for their respective counties, who shall hold his office till the first Monday in January, eighteen hundred and seventy-seven, and until his successor is elected and qualified. (*Sp. Laws* 1885, *c.* 37, § 1.)

*§ 27. **Duties—what law to apply.** The special law creating the office of county auditor in the counties of Pembina, Walsh, Grand Forks, Lincoln, Traill, Cass, and Richland, approved March ninth, eighteen hundred and eighty-three, chapter one, sections one to seventy, inclusive, shall apply to and prescribe the duties of the auditor of the counties of Spink, Stutsman, Barnes, Morton, Burleigh, Nelson, Brookings, and Miner. (*Id.* § 2.)

See page 729.

CHAPTER LX.

REPORTER OF SUPREME COURT.

*§ 7. **Librarian to purchase reports.** The territorial librarian of the territory of Dakota is hereby authorized to purchase, of the publishers of the third volume of Dakota Supreme Court Reports, two hundred and fifty volumes thereof, at a price not exceeding five dollars per volume: *provided, however,* that if he cannot obtain two hundred and fifty volumes of said reports at the price herein stated, then he shall not purchase any of said reports. (*Sess. Laws* 1885, *c.* 17, § 1.)

*§ 8. **Warrant, when to issue.** Said books shall be well bound in law sheep, and shall be delivered to the said librarian, who shall thereupon approve the publisher's account for said two hundred and fifty volumes, at the price agreed upon, not exceeding the amount named in

section one; and when said accounts, so approved, shall be presented to the territorial auditor, he is authorized, and it is made his duty, to audit said account, and to issue to said publisher a territorial warrant for said account, and the territorial treasurer is authorized to pay said warrant, the same as other warrants drawn upon the territorial treasurer. (*Id.* § 2.)

*§ 9. **Appropriation.** There is hereby appropriated, out of any moneys in the territorial treasury, the sum of twelve hundred and fifty dollars, to defray the expense of such purchase. (*Id.* § 3.)

*§ 10. **Distribution of volumes.** It is hereby made the duty of the librarian of the territory, upon receiving said books, to distribute them as follows: One copy to each of the judges of the supreme court, one copy to the district attorney of each county in the territory, one copy to the United States attorney for Dakota; also to transmit one copy by mail to the public library of each state and organized territory that has exchanged or will exchange reports with this territory, one copy to the library of congress, one copy to the library of the supreme court of the United States, five copies to the clerk of the supreme court of this territory, for the use of the supreme court when in session, one copy to the attorney general of the United States, one copy to the governor of this territory, and the remaining copies, if any, shall be disposed of as provided by law, and all the officers of the territory, when he receive such volume, shall forthwith give his official receipt therefor on a form furnished by said librarian; and it is hereby made the duty of such officer receiving such volume to forthwith deliver the same to his successor in office at the expiration of such term of office. (*Id.* § 4.)

See page 735.

CHAPTER LXI.

AGRICULTURE.

*§ 1. **Territorial board of agriculture.** A department of agriculture, for the promotion of agriculture and horticulture, manufactures, and the domestic arts, is hereby created, and shall be managed by a board, styled the "Territorial Board of Agriculture," to consist of one president, and one vice-president from each legislative district of the territory. The first election of officers is to be held in the city of Mitchell, in the territory of Dakota, on the seventeenth day of June, eighteen hundred and eighty-five, and thereafter on the fair grounds on the Wednesday of the week of the annual territorial fair, and every two years thereafter, by delegates or alternates, or their written proxies, chosen by the several agricul-

tural societies in counties where such societies exist, in the following manner, to-wit: in counties having one agricultural society, such county may appoint three delegates; in counties having two agricultural societies, each society may appoint one delegate, who shall be entitled to one and one-half votes; in counties having three agricultural societies, each society may appoint one delegate; and if either society shall neglect or refuse to appoint such delegate, the delegate or delegates appointed shall be entitled to cast the full vote of the county; and in counties where no agricultural society exists, the delegates may be appointed by the board of supervisors or county board, as the case may be,—each county to be entitled to three votes, and no more; and each union or district agricultural society shall be accredited to that county in which its fair grounds, or the greater part thereof, shall be located. The members of the territorial board of agriculture shall enter upon the duties of their office on the second Tuesday of January succeeding their election, and hold their office for two years, and until their successors are elected and enter upon their duties. The territorial board of agriculture may fill any vacancy, arising from any cause, by appointment from the district in which the vacancy occurs. (*Sess. Laws* 1885, *c.* 3, § 1.)

*§ 2. **Secretary of board—compensation.** The territorial board shall appoint some person, not a member of the board, secretary, and fix his compensation, said compensation not to exceed two hundred dollars per annum, who shall hold his office during the term for which the members of the board appointing him are elected, unless, for good cause, he shall sooner be removed by the board, and who shall perform such duties as usually pertain to the office of secretary, or shall be required of him by the board. (*Id.* § 2.)

*§ 3. **Treasurer—compensation.** They shall also appoint some person, not a member of the board, as treasurer, and fix his compensation,—said compensation not to exceed one hundred dollars per annum, —who shall give bond in such sum and with such security as the board shall direct, conditioned for the faithful discharge of the duties of his office. He shall hold his office during the term for which the members of the board appointing him are elected, unless for good cause he shall sooner be removed by the board. He shall keep an accurate itemized account of all money received by him and paid out, and make an annual report thereof to the territorial board, and make full settlement with the board. (*Id.* § 3.)

*§ 4. **Office of board.** The territorial board of agriculture shall keep an office for the transaction of business at the city of Huron, in the territory of Dakota: *provided*, said city of Huron shall provide a suitable room for such purposes, free of cost to the territory, to be under the control of said board. (*Id.* § 4.)

*§ 5. **Power and authority of board.** The territorial board of agriculture, in that name, may contract and be contracted with, may pur-

chase, hold, or sell property, may sue or be sued in all courts or places, may hold territorial fairs and fat-stock shows at such times and places as the board may determine, but this territory shall never be liable for any debt or contract of said board. (*Id.* § 5.)

*§ 6. **To control affairs of department.** The territorial board of agriculture shall have the sole control of the affairs of the department of agriculture, of all territorial fairs and fat-stock shows, and may make such by-laws, rules, and regulations in relation to the department of agriculture, and the management of the business of such department, and territorial fairs and fat-stock shows, and offering of premiums, as a majority of said board shall from time to time determine, not inconsistent with the constitution and laws of this territory, or of the United States. (*Id.* § 6.)

*§ 7. **Moneys appropriated.** Whatever money shall be appropriated to the department of agriculture shall be paid to the territorial board of agriculture, and may be expended by them as in the opinion of said board will best advance the interests of agriculture and horticulture, manufactures, and domestic arts in this territory: *provided*, when any appropriation is made for the benefit of county or other agricultural societies, the same shall be actually divided between such agricultural societies as shall have given satisfactory evidence to said territorial board of having held an annual fair and paid as premiums not less than three hundred dollars, and made their annual report on or before the fifteenth day of November to the territorial board of agriculture: *provided*, that in counties having more than one agricultural society only one of them shall be entitled to receive a share of the money appropriated for county or district fairs, and the territorial board shall have full power to determine which one shall receive such appropriation. (*Id.* § 7.)

*§ 8. **Annual report.** The territorial board of agriculture shall, after their annual meeting in January in each year, make and deliver to the governor a report of their acts and doings, as required by law, and no other annual reports shall be made by said board. (*Id.* § 8.)

*§ 9. **Other reports—publication of.** Said territorial board of agriculture shall append to and publish with their said report the annual report of the territorial entomologist, and such other reports or essays connected with agriculture, horticulture, manufactures, or the domestic arts as, in the judgment of said board, the interests of the territory require,—said annual report and appended essays not to exceed seven hundred printed pages; and one thousand copies of said report shall be published annually in pamphlet form by the public printer of the territory, at the contract rates, and same shall be distributed jointly by the president of the agricultural society, and the president of the territorial horticultural and forestry association; and a sufficient amount of money is hereby appropriated out of the territorial treasury to pay for the publishing of the same. (*Id.* § 9.)

*§ 10. **Annual fair—police regulations.** It shall be lawful for the territorial board of agriculture, or other agricultural society, at or before the time for holding its annual fair, to select and appoint as many persons to act in the capacity of special police as are by said society deemed requisite to insure peace and good order on or about the grounds or place of holding such fair, for and during the holding of the same: *provided*, that such person, before entering upon the duties of special police, shall receive his authority from, and take the oath of office before, any judge or justice of the peace, or other officer authorized to administer oaths, residing or holding his office in the town or municipal corporation most contiguous to the fair grounds, or place of holding such fair, and shall receive from such judge or justice of the peace a certificate, under seal, of his appointment and authority to act as such special police, which shall be indicated by some appropriate badge of office, and when so authorized he shall be clothed with full police powers. (*Id.* § 10.)

*§ 11. **Damages—trespass on fair grounds.** Whoever trespasses upon any fair grounds to commit any depredations upon the property of any agricultural society, by cutting or destroying any timber or trees, breaking or carrying away any box, trough, stall, bench, fence, lock, door, gate, lumber, or other appurtenances to any fair ground, whether within or without the inclosure thereof, shall be fined not less than five nor exceeding two hundred dollars, and shall be liable, civilly, for all damages sustained by such wrongful act. (*Id.* § 11.)

*§ 12. **Sale of liquors and gaming prohibited.** Whoever shall keep any shop, booth, tent, wagon, vessel, boat, or other place for the sale of spirituous liquors, or expose for sale, sell, or otherwise dispose of any spirituous liquors, or engages in gaming at or within one-half mile of the place where any agricultural, horticultural, or mechanical fair is being held under the auspices of the territorial board of agriculture, shall, for each offense, be fined not less than five nor more than one hundred dollars: *provided*, this section shall not affect tavern keepers, distillers, or others exercising their calling at their usual place of business. (*Id.* § 12.)

*§ 13. **Penalty for violation of statute.** Any person violating the provisions of the preceding section may be arrested, upon view or upon warrant, by any sheriff, coroner, constable, or other officer authorized to make arrest; and such officer may also seize the booth, tent, wagon, vessel, or boat, and articles to be sold, and upon a judgment being rendered against the offender, the same may be sold upon the execution issued upon such judgment; and if sufficient property is not found to satisfy such fine, the offender may be committed to the county jail until the fine and costs are paid, or the prisoner discharged according to law. (*Id.* § 13.)

*§ 14. **"Fair" defined.** Wherever the word "fair" occurs in this act, it shall be held to mean a *bona fide* exhibition of the four principal

classes of live-stock, together with agricultural and horticultural products and mechanical arts. (*Id.* § 14.)

*§ 15. **Compensation of officers.** The officers of the territorial board of agriculture, except the secretary and treasurer, shall serve without pay, but shall receive mileage at the rate of ten cents per mile one way, from their homes to the place of meeting of the society, which shall be paid by the territorial treasurer, upon a warrant issued and certified to by the president of the territorial board of agriculture. (*Id.* § 15.)

TIMBER LANDS.

*§ 16. **Duty of assessors.** All assessors within this territory are authorized, and it is hereby made their duty, to determine and report each year the acreage of timber within their respective districts. Such report shall indicate separately the acreage of natural and cultivated or planted forest averaging four feet or over in height, and shall also specify the kind of trees. Such *data* shall be taken and reported by such assessor without extra salary or charge. (*Sess. Laws* 1885, *c.* 142, § 1.)

PLANTING OF FOREST TREES.

*§ 17. **Bounty to persons planting forest trees.** Every person planting one acre or more of prairie land, within five years after the passage of this act, with any kind of forest trees, except black locust and cotton-wood, and successfully growing and cultivating for three years, shall be entitled to receive for ten years thereafter an annual bounty of two dollars for each acre so planted and cultivated, to be paid out of the territorial treasury; but such bounty shall not be paid any longer than such grove or line of trees is maintained and kept in growing condition. (*Sess. Laws* 1885, *c.* 145, § 1.)

*§ 18. **Plat of the land to be filed.** Any person wishing to secure the benefit of this act shall, within three years after planting such grove of trees, and annually thereafter, file with the county auditor, or clerk of the county in which the same is located, a correct plat of the land, describing the section or fraction thereof on which such grove has been planted or cultivated, and shall make due proof of such planting and cultivation, as well as of the title to the land, by oath of the owner, and the affidavit of two householders residing in the vicinity, setting forth the facts in relation to the growth and cultivation of the grove of trees for which such bounty is demanded. The several county auditors or clerks shall, on or before the first Monday of August of each year, forward to the territorial auditor a certified list of all the lands and tree-planting reported and verified to them in compliance with this act, with the names and post-office address of the respective owners thereof: *provided,* this act shall not apply to any railroad company for planting of trees within two hundred feet of its track, for the purpose of making a

snow fence, nor to any trees planted upon land held, entered, and acquired under the timber culture laws of the United States. (*Id.* § 2.)

*§ 19. **Auditor to issue warrant.** If the territorial auditor shall find that the provisions of this act have been duly complied with, he shall issue to the several applicants entitled thereto his warrant upon the territorial treasurer for the bounty so earned. (*Id.* § 3.)

DESTRUCTION OF NOXIOUS WEEDS.

*§ 20. **Duty of occupant to destroy.** Every person and every corporation shall destroy upon all lands which he or she shall occupy, all weeds of the kinds known as Canada thistles, cockle burr, and mustard, at such time and in such manner as shall effectually prevent their bearing seed. Such time and manner of destroying such weeds shall be prescribed by township boards of supervisors, or by board of county commissioners in counties which shall not be organized into townships, and the same shall be published at least two weeks, in some newspaper published in the county, not less than two weeks before the time so prescribed: *provided*, that if there be no newspaper published in the county, then written notices of the same shall be posted, the same as election notices are posted, in lieu of such publication. Every overseer of highways of every township or county shall also, in like time and manner, destroy all such weeds that may grow either on the highway of his road-district, or on any unoccupied land therein, or on any occupied land therein which the occupant thereof shall refuse or neglect to so destroy. For so doing, such overseer shall have such compensation, payable out of the township treasury or county treasury, as the township board of supervisors or board of county commissioners, upon the presentation of his account therefor, verified by his oath, and specifying by separate items the charges on each piece of land, describing the same, shall deem reasonable; and the respective accounts so paid, except for the destruction of such weeds upon the highways, shall be placed on the next tax-roll of the township or county, as the case may be, in a separate column, headed, "For destruction of weeds," as a tax against the lands upon which such weeds were destroyed, and be collected as other taxes, and the entry of such tax on the tax-roll shall be conclusive evidence of the liability of the land so taxed to such tax. (*Suppt. Sess. Laws* 1885.)

*§ 21. **Forfeiture for failure to destroy.** If the occupant of any such lands, or any such overseer, shall fail to destroy such weeds as so required, such occupant or overseer shall forfeit not less than five dollars, nor more than fifty dollars. The chairman and each supervisor of every township, or the chairman and each commissioner of counties not organized into townships, shall prosecute promptly for every such forfeiture which he shall have reason to believe to have been incurred. (*Id.* § 2.)

*§ 22. **Repealing clause.** That an act entitled "An act to prevent the spread of noxious weeds in the counties of Union, Clay, Lincoln, and Cass," be, and the same is hereby, repealed. (*Id.* § 3.)

CHAPTER LXII.

REGULATION OF TRANSPORTATION.

BOARD OF RAILROAD COMMISSIONERS.

*§ 1. **Board of commissioners, appointment of.** The governor, with the advice and consent of the council, shall biennially appoint three competent persons, who shall constitute a board of railroad commissioners, and who shall hold their office for the term of two years from the first of April next after such appointment. The governor shall, by appointment, fill any vacancy caused by death, removal, or resignation. Said commissioners shall hold their offices until their successors are duly appointed and qualified. No person owning bonds, stock, or other property in any railroad company, or who is in the employment of, or who is in any manner pecuniarily interested in, any railroad corporation, public warehouse, or elevator, shall be eligible to the office of railroad commissioner. Said commissioners shall be selected, as nearly as practicable, one from the southern, one from the central, and one from the northern part of the territory. (*Sess. Laws* 1885, *c.* 126, § 1.)

*§ 2. **Supervision of railroads.** Said commissioners shall have general supervision of all railroads in the territory, and shall inquire into any neglect or violation of the laws of this territory by any railroad corporation, its officers, agents, or employes doing business therein, and shall from time to time carefully examine and inspect the condition of each railroad in the territory, and the manner of its conduct and management, with reference to its safety and general relations to the public business of the territory. (*Id.* § 2.)

*§ 3. **Commissioners to suggest improvements in modes of transportation.** Whenever, in the judgment of the railroad commissioners, it shall appear that any railroad corporation fails in any respect or particular to comply with the laws of the territory, or its charter, or when, in their judgment, any repairs are necessary upon its road, or any addition to its rolling stock, or any addition or change in its station-houses, or any change in the rates of passenger fare, or its charges for transporting freight, or transferring the same from one road or station to another, or any change in the manner of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, said commissioners shall inform such railroad corporation of the improvements and changes which they deem to be proper, by a notice in writing, to be served by leaving a copy thereof, certified by the commissioners' clerk, with any station agent, clerk, or treasurer, or any director of said corporation, and a report of the proceedings shall be included in the report of the railroad commissioners to the legislature. Nothing in this section shall

be construed as relieving any railroad company from their present responsibility or liability for damage to persons or property. (*Id.* § 3.)

*§ 4. **Annual report to be made.** The said railroad commissioners shall, on or before the first Monday in December of each year, make a report to the governor of their doings for the preceding year, containing such facts, statements, and explanations as will disclose the workings of the system of railroad transportation in this territory, and its relation to the general business and prosperity of the citizens of the territory, and such suggestions and recommendations in respect thereto as may to them seem appropriate. Said report shall also contain, as to every railroad corporation doing business in this territory:.

1. The amount of its capital stock.
2. The amount of its preferred stock, if any, and the amount of its preferment.
3. The amount of its funded debt, and the rate of interest.
4. The amount of its floating debt.
5. The cost and present value of its road and equipment, including permanent way buildings and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business.
6. The estimated cash value of all property owned by such corporation, with a schedule of the same, not including lands granted in aid of its construction.
7. The number of acres originally granted in aid of construction of its road, by the United States or by this territory.
8. Number of acres of such land remaining unsold.
9. A list of its officers and directors, with their respective places of residence.
10. Such statistics of the road, and of its transportation business for the year, as may, in the judgment of the commissioners, be necessary and proper for the information of the legislative assembly, or as may be required by the governor. Such report shall exhibit and refer to the condition of such corporation on the first day of July of each year, and the details of its transportation business transacted during the year ending June thirtieth.
11. The average amount of tonnage that can be carried over each road in the territory with an engine of given power. (*Id.* § 4.)

*§ 5. **Returns to be made by railroad companies.** To enable said commissioners to make such report, the president or managing officer of each railroad corporation doing business in this territory shall annually make to the said commissioners, on the fifteenth day of the month of September, such returns, in the form which they may prescribe, as will afford the information required for their said official report. Such returns shall be verified by the oath of the officer making them, and any railroad corporation whose returns shall not be made as herein prescribed by the fifteenth day of September, shall be liable to a penalty of one hundred dollars for each and every day after the sixteenth

day of December that such returns shall be willfully delayed or refused. (*Id.* § 5.)

*§ 6. **Salary of commissioners.** The said commissioners shall hold their office at such place as they shall determine. They shall each receive a salary of two thousand dollars, to be paid as the salaries of other territorial officers are paid, and shall be provided, at the expense of the territory, with necessary office furniture and stationery, and they shall have authority to appoint a secretary, who shall receive a salary of fifteen hundred dollars per annum. (*Id.* § 6.)

*§ 7. **Qualification for office — bonds of office.** Said commissioners and secretary shall be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same, and no person in the employ of any railroad corporation, or holding stock in any railroad corporation, shall be employed as secretary. Each of said commissioners shall enter into bonds, with surety to be approved by the governor, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties. (*Id.* § 7.)

*§ 8. **Power and authority of commissioners.** The said commissioners shall have power, in the discharge of the duties of their office, to examine any of the books, papers, or documents of any such corporation, or to examine, under oath or otherwise, any officer, director, agent, or employe of any such corporation. They are empowered to issue subpœnas and administer oaths in the same manner, and with the same power to enforce obedience thereto in the performance of their said duties, as belong and pertain to the courts of law in this territory; and any person who may willfully obstruct said commissioners in the performance of their duties, or who may refuse to give any information within his possession that may be required by said commissioners, within the line of their duty, shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding one thousand dollars, in the discretion of the court, and the cost of such subpœnas and investigation, to be first paid by the territory, on the certificate of said commissioners. (Said commissioners shall have power, and it is hereby made their duty, in all cases where they find, on due investigation, that any rate charged by any company or corporation is exorbitant, unjust, or oppressive, to alter or lower the same, and fix a maximum.)[1] No railroad company shall charge or receive from any person a higher rate per ton per mile for one car-load of freight than for a greater number of carloads per car. (*Id.* § 8.)

*§ 9. **Duty of railroads to transport freight.** It shall be the duty of all railroad corporations doing business in this territory, upon reasonable notice, to furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and to secure and transport such freight with all reasonable dispatch, and provide and keep suitable facilities for the securing and handling of the

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[1] The words included in parentheses were stricken out by amendment. (*Sess. Laws* 1885, *c.* 127, § 1.

same at any depot on the line of its road, and also to receive and transport in like manner the empty and loaded cars furnished by any connecting line of road, to be delivered at any station or stations on the line of its road, to be loaded or discharged, or reloaded and returned to the road so connecting, and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for similar service. (*Id.* § 9.)

*§ 10. **Transportation of grain in bulk.** Any railroad company doing business in this territory, when desired by any person wishing to ship grain over its road, shall receive and transport such grain in bulk within a reasonable time, and permit the same to be loaded either on its track adjacent to its depot, or at any warehouse or side track, without distinction, discrimination, or favor between one shipper and another, and without discrimination or distinction as to the manner in which such grain is offered for transportation, or as to person, warehouse, elevator, or place where, or to which, it may be consigned. Every railroad company shall permit connections to be made and maintained in a reasonable manner with its track, to and from any warehouse, elevator, or mill adjacent to any station on its line, without reference to its size or capacity, where grain or flour is or may be stored: *provided, however*, that such railroad company shall not be required to pay the cost of making and maintaining said connection, or of the siding or switch track necessary to make the same: and *provided, further*, that a majority of the commissioners appointed under this act shall direct such railroad to make such connection and siding. Grain shall also be received from wagons or sleighs, in car-load lots, the same as when offered from warehouses or elevators, allowing reasonable time for loading the cars, and the cars shall be placed in a convenient place, easy of access. (*Id.* § 10.)

*§ 11. **Rates of fares and freights—discriminations prohibited.** No railroad corporation shall charge, demand, or receive from any person, company, or corporation, for the transportation of persons or property, or for any other service, a greater sum than it shall at the same time charge, demand, or receive from any other person, company, or corporation for a like service from the same place, and all concession of rates, rebates, drawbacks, and contracts for special rates shall be open to and allowed to all persons, companies, and corporations, and they shall charge no more for transporting from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point of equal distance within the territory. (*Id.* § 11.)

*§ 12. **Fares and freights to be reasonable.** No railroad company shall charge, demand, or receive from any company or corporation an unreasonable price for the transportation of persons or property, or for the handling or storage of freight, or for the use of its cars, or for any privilege or service afforded by it in the transaction of its business as a railroad corporation, and shall not demand the payment of

freight beyond the point to which the goods or property is consigned by the shipper. (*Id.* § 12.)

*§ 13. **Forfeiture for discriminations.** Any railroad corporation which shall violate any of the provisions of this act, as to extortion or unjust discrimination, shall forfeit for every such offense, to the person, company, or corporation aggrieved thereby, three times the actual damage sustained, or overcharges paid, by the said party aggrieved, together with costs of suit, and a reasonable attorney's fee, to be fixed by the court; and, if an appeal is taken from the judgment, or any part thereof, it shall be the duty of the appellate court to include in the judgment an additional attorney's fee for service in the appellate court or courts therefor. And in all cases where complaint is made, in accordance with the provisions of section fourteen, hereinafter provided, that an unreasonable charge or regulation is made, the commissioners shall require a modified charge or regulation, such as they shall deem reasonable, and all cases of a failure to comply with the recommendations of the commissioners shall be embodied with the report of the commissioners to the legislature, and shall apply to any unjust discrimination, extortion, or overcharge by said company, or other violation of law. (*Id.* § 13.)

*§ 14. **Proceedings of commissioners on complaint made.** Upon the complaint of the mayor and aldermen of any city, or board of county commissioners, or of the trustees or supervisors of any town or township, of the freight tariff charged, or of any injustice to the public, growing out of any rule or regulation of a railroad company, it shall be the duty of the commissioners, in case they deem the case just and reasonable, to proceed to make examination; first giving the petitioners and corporation reasonable notice, in writing, of the time and place of entering upon the same. If, upon examination, it shall appear to said commissioners that the complaint of the petitioners is well founded, they shall so find, and shall inform the corporation operating such railroad of their adjudication, within ten days, and shall also report their action to the governor, as provided in this act. All sleeping-car companies, express companies, and telegraph companies doing business in this territory shall make such reports of their business as the railroad commissioners may require, and said commissioners shall have the same authority over and supervision of all sleeping-car companies, express companies, and telegraph companies doing business in this territory as over railroad corporations. (*Id.* § 14.)

*§ 15. **Commissioners to enforce provisions of statute.** All railroad companies operating any lines of road in this territory are hereby declared subject to the provisions of this act, and the commissioners herein provided for are authorized, and it is made their duty, to enforce its provisions in the courts of this territory; and it is made the duty of the district attorney, or, in case of his neglect or refusal, the attorney general, to prosecute any and all violations of its provisions, upon complaint being made by said commissioners. (*Id.* § 15.)

*§ 16. **Remedies preserved.** Nothing in this act shall be construed to estop or hinder any person or corporation from bringing suit against any railroad company for any violation of the laws of this territory for the government of railroads. (*Id.* § 16.)

*§ 17. **Repealing clause.** All acts or parts of acts inconsistent with this act are hereby repealed. (*Id.* § 17.)

*§ 18. **Transportation of fuel.** Any railroad company doing business in this territory, when desired by any person wishing to ship coal or other fuel over its road, shall receive and transport such coal or other fuel in bulk, within a reasonable time, and permit the same to be loaded either on its track near the depot, or at any warehouse or side track, without distinction, discrimination, or favor between one shipper and another, and without discrimination or distinction as to the manner in which such coal or other fuel is offered for transportation, or as to the person, warehouse, or place where or to which it may be consigned. Every railroad company shall permit connections to be made and maintained in a reasonable manner with its track to and from any coal mine adjacent to or near any station or side track on its line: *provided, however*, that such railroad company shall not be required to pay the cost of making or maintaining said connections, or of the siding or switch track necessary to make the same; and *provided, further*, that a majority of the railroad commissioners shall direct such railroad to make such connections and siding. (*Sess. Laws* 1885, *c.* 61, § 1.)

*§ 19. **Discriminations prohibited.** No railroad corporation shall charge, demand, or receive from any person, company, or corporation, for the transportation of coal or other fuel, a greater sum than it shall at the same time charge, demand, or receive from any other person, company, or corporation for a like service from the same place; and all concessions of rates, rebates, drawbacks, and contracts for special rates, shall be open to and allowed to all persons, companies, and corporations, and they shall charge no more for transporting from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point within the territory. (*Id.* § 2.)

*§ 20. **Statute to apply.** All the provisions of an act entitled "An act to provide for the establishment of a board of railroad commissioners, defining their duties, and to regulate the receiving and transportation of freight on railroads in this territory," shall apply to the receiving and shipments of coal and other fuel, so far as the same is applicable; and it shall be the duty of the railroad commissioners to enforce the provisions of this act. (*Id.* § 3.)

CHAPTER LXIII.

BOARDS OF HEALTH.

*§ 1. **Territorial board.** There is hereby established a territorial board of health of the territory of Dakota, composed of a president, vice-president, and superintendent of public health. The attorney general of said territory shall be *ex officio* president of said board. The governor shall appoint some suitable person, resident of this territory, vice-president, and he shall also appoint, by and with the advice and consent of the council, said superintendent of public health, who shall be learned in medicine, a graduate of some medical college recognized by the American Medical Association, and a resident of this territory, and the several persons thus appointed shall hold their offices for two years, and until their successors are elected and qualified. (*Sess. Laws* 1885, *c.* 63, § 1.)

*§ 2. **Officers of board, duties of.** The president of said board shall preside at the meetings thereof, and the vice-president shall perform the duties of president in his absence. The superintendent of public health shall be *ex officio* secretary of said board. He shall keep a record of all proceedings of the territorial board of health, and of his own acts as such superintendent, and he shall perform such other duties as are prescribed by this act, or may be prescribed by the territorial board of health. The records kept by said superintendent shall be by him at all times kept open to the inspection of the public. (*Id.* § 2.)

*§ 3. **Meetings—where and when held.** The several persons composing said territorial board of health shall meet at the capital of said territory on the ——— day of April, eighteen hundred and eighty-five, and they shall thereafter meet as often as once in every six months, at such place in said territory as they may, from time to time, appoint. (*Id.* § 3.)

*§ 4. **Power of board.** Said territorial board of health shall have power, and it shall be their duty,—

1. To fix the time and place of the meeting of said board, subject only to the provisions of section three of this act.
2. To make rules and regulations for the government of said board, its officers, and its meetings.
3. To make and enforce any and all needful rules and regulations for the prevention and cure, and to prevent the spread of, any contagious, infectious, or malarial diseases among persons and domestic animals.
4. To establish quarantine, and isolate any person affected with contagious or infectious disease.
5. To isolate, kill, or remove any animal affected with contagious or infectious disease.
6. To remove, or cause to be removed, any dead, decaying, or putrid body, or any decayed, putrid, or other substance, that may endanger the health of persons or domestic animals.

7. To condemn, and cause to be destroyed, any impure or diseased article of food that may be offered for sale.

8. To superintend the several boards of health in cities, villages, and towns, and the county boards of health of the several counties.

9. To empower and direct the superintendent of public health to do or cause to be done any or all the things mentioned in subdivisions four, five, six, seven, and eight of this act. (*Id.* § 4.)

*§ 5. **Salary of superintendent.** The superintendent of public health shall be paid a yearly salary of five hundred dollars, in equal installments, at the end of every three months. He shall also be paid five cents per mile for every mile actually and necessarily traveled in the performance of his official duties, and such other sum or sums as he may necessarily pay or become liable to pay for the official books, records, and papers kept by him, and for the printing of his reports, and such circulars and blanks as may be required for the proper conduct of the business of his office, not to exceed in the aggregate the sum of three hundred dollars. The accounts of the superintendent for his mileage and said other expenses of his office shall be audited by said territorial board of health, and the same, together with his salary, shall be paid out of the territorial treasury. (*Id.* § 5.)

*§ 6. **Compensation of president and vice-president.** The president and vice-president of the said territorial board of health shall receive no compensation for the performance of their official duties, but they shall be paid five cents for every mile actually and necessarily traveled, and such other necessary expenses as they may pay or incur in attending the meetings of said board, or in the performance of their duties as such officers. (*Id.* § 6.)

*§ 7. **County board, how constituted.** At the first meeting of said territorial board of health, they shall appoint two persons from each county, residents thereof, who, with the district attorney of the county from which they are appointed, shall constitute a county board of health for such county. The district attorney shall be the president of such county board of health. One of the persons so appointed from each county shall be learned in medicine, and shall hold a license to practice medicine from the superintendent of public health, who shall be superintendent of health in the county for which he is appointed. The other person so appointed by said board from such county shall be vice-president of the county board of health. (*Id.* § 7.)

*§ 8. **Duties of president of county board.** The president of each county board of health shall preside at the meetings thereof, and in his absence the vice-president shall perform the duties of president. The county superintendent of health shall be *ex officio* secretary of the board of health of his county. The said county superintendent of health shall keep a record of all the proceedings of such board, and of his official acts, and he shall, at the end of every month, make a full report in writing to the superintendent of public health of the proceedings of the county board of health, and of his official acts, and shall, whenever danger to the health

of persons or domestic animals is threatened, or whenever any contagious or infectious disease occurs in his county, either among persons or domestic animals, immediately report the same to the superintendent of public health. (*Id.* § 8.)

*§ 9. **Meetings of county boards.** The several county boards of health shall meet at the county seat in their respective counties, at such time within thirty days after the appointment of the county superintendent of health as he may designate. Notice of the time and place of such meeting shall be by him given to the other members of said county board at least five days prior to such meeting, and thereafter said county board of health shall meet at the county seat as often as once in every three months. (*Id.* § 9.)

*§ 10. **Power of county boards.** The several county boards of health shall have power, within their respective counties, subject to the supervisory control of the territorial board of health, and the superintendent of public health, to do and perform all the things mentioned in subdivisions three, four, five, six, seven, and eight of section four of this act. All expenses actually and necessarily paid or incurred by the county boards of health in carrying out the provisions of this act shall be audited by said board, and certified to the county commissioners of the county where such expenses are incurred, and shall be paid the same as other county expenses are paid. (*Id.* § 10.)

*§ 11. **County superintendent of health.** The county superintendent of health shall have charge of and superintend, subject to the approval of the board of which he is a member, and the supervisory control of the territorial board of health and superintendent of public health, all the matters and things mentioned in subdivisions four, five, six, and seven of section four of this act, within his county, and in case of immediate danger to the health of persons or of domestic animals, he may act as in his judgment he may deem best, without consultation with the other members of the county board of health, for the prevention of such danger, and he shall immediately report such action to the president of the county board of health, and to the superintendent of public health. (*Id.* § 11.)

*§ 12. **Compensation of officers of county board.** The president of the county board of health shall receive no other compensation than that which is provided for; shall receive five cents for every mile actually and necessarily traveled in the performance of his duties as a member of said board. The county superintendent of health shall receive five dollars per day for every day in which he may be actually and necessarily engaged, and five cents per mile for every mile actually and necessarily traveled in the performance of his duties; and he shall also receive such other sum or sums as he may necessarily pay or become liable to pay in carrying out and performing the various duties imposed upon him, under the provisions of this act, or by the county board of health, all of which accounts for services, mileage, and other expenses shall be audited by the county board of health, and certified to

the county commissioners of the county, and paid as other county expenses are paid. (*Id.* § 12.)

*§ 13. **Reports of superintendent.** The superintendent of public health shall, on the first day of December, eighteen hundred and eighty-six, and biennially thereafter, make a full report to the governor, and to the legislative assembly of the territory of Dakota, which report shall show all that has been done by the territorial board of health, and by such superintendent of public health, during the two years preceding the making of such report; the number of cases treated by said superintendent of public health, and in each of the counties by the county superintendents of health; the character and extent during such time of all the contagious or infectious diseases that have been reported to said superintendent of public health; and he shall also report a full statement of all expenditures by said territorial board of health, and in each of the organized counties in this territory, by the county boards of health, and he shall also report such recommendations as he may deem advisable for the better protection of the public health, and the prevention and cure of contagious or infectious diseases of persons and of domestic animals. (*Id.* § 13.)

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*§ 15. **Vacancies in office, how filled.** In case any vacancy shall occur in the office of vice-president or superintendent of public health, such vacancy shall be filled by appointment by the governor, and the person so appointed to fill such vacancy shall hold for the unexpired term of office in which such vacancy occurs. In case any vacancy occurs in the office of vice-president or superintendent of health in any of the county boards of health, the superintendent of public health shall appoint some suitable person to fill such vacancy, and the person so appointed shall hold such office until the next meeting of the territorial board of health, and until a successor to such officer has been appointed by said territorial board of health. (*Id.* § 15.)

*§ 16. **Effect of act.** Nothing contained in this act shall in any manner affect any board of health heretofore established, or that may be hereafter established, in any city, village, or incorporated town: *provided, however*, that all such boards of health shall be under the superintending control of the territorial board of health. (*Id.* § 16.)

See pages 389, 638.

CIVIL CODE.

DIVISION SECOND.

PROPERTY.

PART III.

PERSONAL OR MOVABLE PROPERTY.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER III.

CORPORATIONS.

ARTICLE I.—CREATION OF CORPORATIONS.

§ 389. **Secretary's certificate.** Upon the filing of the articles of incorporation with the secretary of the territory, he shall issue to the corporation, over the great seal of the territory, a certificate that the articles containing the required statement of facts have been filed in his office; and thereupon the person signing the articles, and their associates and successors, shall be a body politic and corporate by the name and for the purposes stated in said articles. (*As amended, Sess. Laws* 1885, *c.* 35, § 1.)

See page 799.

§ 390. **Record of secretary.** Upon the filing of any articles of incorporation, as in the last section is prescribed, the secretary of the territory shall cause the same to be recorded in a book to be kept in his office for that purpose, to be called "The Book of Corporations," with the date of filing. (*Id.* § 2.)

See page 800.

ARTICLE III.—CORPORATE POWERS.

§ 416. **Changing amount of stock.** * * *

Subd. 5. The certificate must be filed in the office of the secretary of the territory, there to be recorded in the Book of Corporations; and thereupon the capital stock shall be so increased or diminished.

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(*As amended, Sess. Laws* 1885, *c.* 35, § 3.)

See page 807.

ARTICLE XI.—INSURANCE CORPORATIONS.

Revisory and Amendatory Provisions.

*§ 510*a*. **Who may incorporate—purposes.** That any number of persons, not less than seven, may associate, form, and incorporate a company for the following purposes, to-wit: To make insurance upon dwelling-houses, stores, and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, lightning, cyclone, tornado, or hail, and the risks of inland navigation and transportation. Any and all insurance companies incorporated under the provisions of this act, which shall, in a declaration and charter provided to be filed, have expressed an intention to make an insurance, or which shall have power to make insurance; against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights, and other property, against loss and damage by all or any of the risks of lake, river, canal, and inland navigation and transportation. (*As amended, Sess. Laws* 1885, *c.* 69, § 1.)

*§ 510*b*. **May reinsure.** Any companies organized under this act shall have power to effect reinsurance of any risks taken by them respectively. (*As amended, Id.* § 2.)

*§ 510*c*. **Organization—declaration—copy of charter.** Such persons shall file in the office of the territorial auditor a declaration, signed by all the incorporators, expressing their intention to form a company for the purpose of transacting the business of insurance, as expressed in the first section of this act, which declaration shall also comprise a copy of the charter proposed to be adopted by them, and shall publish a notice of such intention, once in each week, for at least four weeks, in a public newspaper published in the county in which such insurance company is proposed to be located. (*As amended, Id.* § 3.)

*§ 510*d*. **Form of charter—authority of auditor.** The charter comprised in such declaration shall set forth the name of the company, the place where the principal office for the transaction of its business shall be located, and the mode and manner in which the corporate powers granted by this act are to be exercised, the mode and manner of electing directors, a majority of whom shall be citizens of this territory, and filling of vacancies,—and each director of the company shall be the owner, in his own right, of at least five hundred dollars' worth of the stock of such company,—and the period for the commencement and termination of its fiscal year, and the amount of capital to be employed in the transaction of its business; and the territorial auditor shall have the right to reject any name or title of any company applied for, when he shall deem the name too similar to any one already printed, or likely to mislead the public in any respect. (*As amended, Id.* § 4.)

*§ 510*e*. **Restrictions on power of corporations.** No company formed under this act shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise, or other commodities whatever, except such articles as may have been insured by such company, and claimed to be damaged by fire, lightning, cyclone, tornado, hail, or water. (*As amended, Id.* § 5.)

*§ 510*f*. **Capital required.** No company shall be incorporated under this act with a capital less than one hundred thousand (100,000) dollars, actually paid in cash, and shall at all times be provided with cash on hand equal, at least, to twenty per centum of its capital. No joint-stock fire, cyclone, tornado, hail, inland, or marine insurance company, of any other state, territory, or nation, shall do business in this territory, unless it has at least one hundred thousand dollars capital, actually paid in cash. (*As amended, Id.* § 6.)

*§ 510f^1. **Risks which may be taken.** No fire insurance company organized under this act, or transacting business in this territory, shall expose itself to any loss by any one fire or inland navigation risk or hazard to an amount exceeding ten per centum of its paid-up capital; and it shall be lawful for any company doing business in the territory to insure houses, buildings, and all other kinds of property against loss or damage by fire, lightning, cyclone, or tornado, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel or boat, wherever the same may be; to insure growing crops against damage or loss by hail; to insure horses, cattle, and other live-stock against loss or damage by accident, theft, or any other unknown or contingent event whatever which may be subject to legal insurance, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business; and upon any interest which it may have in property, and generally to do and perform all other matters and things proper to promote these objects, and no company organized under this act for transacting business in this territory, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per centum of its paid-up capital, unless the excess shall

be reinsured in some other good, reliable company. (*As amended, Id.* § 7.)

*§ 510*g*. **Opening books for subscription to stock.** It shall be made lawful for the individuals associated for the purpose of organizing any company under this act, after having published the notice and filed the declaration and charter, as required by the third section of this act, and also on filing in the office of the territorial auditor proof of such publication, by the affidavit of the publisher of said newspaper, his foreman or clerk, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed. (*As amended, Id.* § 8.)

*§ 510*h*. **Investment of capital.** It shall be lawful for any insurance company organized under this act, or any such company incorporated under any law of this territory, to invest its capital and the fund accumulated in the course of its business, or any part thereof, in bonds and mortgages on improved unincumbered real estate within the territory of Dakota, worth double the sum loaned thereon, (exclusive of buildings, unless such buildings are insured and the policy transferred to said company,) and also in the bonds of the territory, or stocks, or treasury notes of the United States, and also the bank stock of national banks, and also in the stock and bonds of any county or incorporated city in the territory, authorized to be issued by the legislature; to loan the same, or any part thereof, on the security of such stocks, or bonds, or treasury notes, or upon bonds or mortgages as aforesaid, and to change and reinvest the same as occasion may from time to time require; but the surplus money over and above the capital stock of such insurance company, incorporated under any law of this territory, may be invested in or loaned upon the pledge of public stocks or bonds of the United States, or any of the states, or stocks, bonds, or other evidence of indebtedness of any solvent, dividend-paying institution, incorporated under the laws of this territory, or United States, except their own stock: *provided, always*, that the market value of such stocks, bonds, or other evidence of indebtedness, shall be at all times, during the continuance of such loan, at least ten per centum more than the amount loaned thereon. (*As amended, Id.* § 9.)

*§ 510*i*. **What real estate may hold.** No company organized by or under this act shall purchase, hold, or convey real estate, except for the purpose and in the manner herein set forth, to-wit:

1. Such as shall be requisite for its convenient accommodation in the transaction of its business; or,
2. Such as shall have been mortgaged to it in good faith as security for loans previously contracted, or for money due; or,
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in their legitimate business, or for money loaned; or,
4. Such as have been purchased at sales upon judgment, decrees, or mortgage foreclosures obtained or made for such debts. And it shall not be lawful for any such company to purchase, hold, or convey real estate in any other case or for any other purpose. (*As amended, Id.* § 10.)

*§ 510*j*. **Charter—duty of district attorney and auditor—certificate to be filed.** The charter or proof of publication herein required to be filed by every such company shall be examined by the district attorney of the county in which the principal office of the company is located, and if found conformable to this act, and not inconsistent with the laws of the territory, shall be certified by him to the territorial auditor, who shall thereupon cause an examination to be made, either by himself or three disinterested persons specially appointed by him for that purpose, who shall certify under oath that the capital herein required of the company named in the charter, according to the nature of the business proposed to be transacted by such company, has been paid in, and is possessed by it in money, or in such stocks and bonds and mortgages as are required by the ninth section of this act. Such certificates shall be filed in the office of the said auditor, who shall thereupon deliver to such company a certified copy of the charter and of such certificates, which, on being filed in the office of the register of deeds of the county where the company is to be located, shall be their authority to commence business and issue policies; and such certified copy of the charter and of said certificates may be used for or against such company with the effect as the originals, and shall be conclusive evidence of the fact of the organization of such company. (*As amended*, *Id.* § 11.)

*§ 510*k*. **By-laws—corporate seal.** The incorporators or directors, as the case may be, of any company organized under this act, shall have power to make such by-laws, not inconsistent with the laws of this territory, as may be deemed necessary for the government of its officers and conduct of its affairs, and the same, when necessary, to alter and amend. And they and their successors may have a common seal, and change and alter the same at their pleasure. (*As amended*, *Id.* § 12.)

*§ 510*l*. **Dividends—amount reserved.** It shall not be lawful for the directors, trustees, or managers of any insurance company organized under this act, or incorporated under any law of this territory, to make any dividends, except from the surplus profits arising from their business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent. of the amount received as premiums on all unexpired risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall be also reserved all sums due the corporation on bonds, mortgages, stocks, and book-accounts of which no part of the principal or interest thereon has been paid during the year preceding such estimate of the profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest shall not have been paid. (*As amended*, *Id.* § 13.)

*§ 510*m*. **Companies may extend charter.** Any existing insurance company heretofore incorporated under the laws of this territory, or any company organized under this act, having a capital of at least one hundred thousand dollars, may, without increasing its capital, at any time within two years previous to the termination of its charter,

after giving notice, at least once a week for four weeks successively, in a newspaper published in the county where such company is located, of such intention, with declaration under its corporate seal, signed by the president and two-thirds of the directors, of their desire for such extension,—provided said directors have been so instructed by a majority vote of the stock,—may extend the term of its original charter in accordance with the provisions of this act, by altering or amending the same so as to agree therewith, and filing a copy of such amended charter, with the declaration aforesaid, in the office of the territorial auditor, whereupon the same proceedings shall be had as are required in the eleventh section of this act. (*As amended*, *Id.* § 14.)

*§ 510*n*. **Existing companies may increase capital.** Any existing insurance company, or any company formed under this law, may at any time increase the amount of its capital stock, after giving notice once a week for four consecutive weeks in any newspaper published in the county where such company is located, of such intention, with the written consent of three-fourths in amount of its stock, unless otherwise provided in its charter or by-laws, by altering or amending its charter or by-laws in this respect, upon filing a copy of its charter or by-laws so amended, together with the declaration under its corporate seal, signed by its president and directors, of their desire to do so, with such consent of three-fourths in amount of its stock to such increase, in the office of the territorial auditor, and upon the same proceedings had as are required by the eleventh section of this act. (*As amended*, *Id.* § 15.)

See pages 846–849.

*§ 510*p*. **Annual statements—blanks furnished by auditor.** Every insurance company doing business in this territory must transmit to the territorial auditor a statement of its condition and business for the year ending on the preceding thirty-first day of December, which shall be rendered on the first day of January in each year, or within one month thereafter, except that foreign insurance companies shall transmit their statement of business, other than that taken in the United States, prior to the following first day of May. Such statement must be published at least three times in a newspaper of general circulation, printed and published in each judicial district of this territory in which said insurance company shall have an agency, and a duplicate thereof, upon which shall be indorsed the names of the attorneys on whom process of law can be served as required by this act, shall be filed in the office of the register of deeds of the county wherein the agency may be established; but the provisions of this section as to the appointment of attorneys shall not apply to companies organized within this territory. Statements for publication shall be made out on blanks furnished by the territorial auditor, and the territorial auditor's certificate of authority for the company to do business in this territory shall be published in connection with the said statement of each company doing business in this territory. Proof of publication, to-wit: the printer's affidavit of the fact, shall be filed with the territorial auditor in all cases:

Provided, the territorial auditor shall select three newspapers of general circulation, published in each of the judicial districts, from which said company shall select one in which said statement shall be published. (*As amended, Id.* § 16.)

*§ 510*q*. **Form of annual statement.** The annual statements required by the last section must be in form, and state particulars, as follows:

1. The name of the company, and where located.

2. The name and residence of the attorney for this territory.

3. The amount of capital stock actually paid in cash.

4. The property or assets of the company, specifying:

(*a*) The value, as nearly as may be, of the real estate owned by the company.

(*b*) The amount of cash on hand, in office.

(*c*) The amount of cash on deposit in banks.

(*d*) The amount of cash in hands of agents and in course of transmission.

(*e*) The amount of loans secured by bonds and mortgages, being first lien on real estate worth double the amount of the sum loaned thereon.

(*f*) The amount of stocks and bonds owned by the company, specifying the amount, number of shares, and market value of each kind of stock on the day of making the statement.

(*g*) The amount of stocks held by them as collateral security for loans, with the amount loaned on each kind of stock, par value and market value thereof on the day the statement is made.

(*h*) The amount of all other sums due the company.

5. The liabilities of such company, specifying:

(*a*) The amount of losses unpaid.

(*b*) The amount of claims for losses, resisted by the company.

(*c*) The whole amount of unearned premiums on outstanding risks.

(*d*) The amount of dividends declared, and due and remaining unpaid.

(*e*) The amount of dividends, if any, declared and not yet due.

(*f*) The amount of money borrowed and remaining unpaid, and the securities, if any, given for the payment thereof.

(*g*) The amount of all other existing claims.

6. The income of the company during the preceding year, specifying:

(*a*) The whole amount of cash premiums received, stating separately the amount of premiums received on policies written in the territory of Dakota.

(*b*) The whole amount of interest money received, stating separately the amount of interest received on loans in the territory of Dakota.

(*c*) The whole amount of income received from all sources.

7. Expenditures during the preceding year, specifying:

(*a*) The whole amount of losses paid during the preceding year, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement; also stating separately the amount of losses paid upon risks taken in this territory, and how much accrued prior, and how much subsequent, to the preceding statement.

(*b*) The amount of dividends paid during the preceding year.

(*c*) The whole amount of fees and commissions paid to officers and agents during the preceding year.

(*d*) The amount of taxes paid during the preceding year, stating separately the amount paid in this territory.

(*e*) The amount of fees paid the auditor of this territory, not including taxes.

(*f*) The whole amount paid for salaries of officers and agents during the preceding year.

(*g*) The whole amount of all other expenditures.

8. Specifying:

(*a*) The gross amount of risks taken during the preceding year, stating the amount in this territory separately.

(*b*) The whole amount of risks outstanding.

(*c*) The whole amount of losses incurred during the year, including those claims not yet due, stating separately those incurred in this territory.

(*d*) The number of agents in this territory. (*As amended, Id.* § 17.)

*§ 510*r*. **Additional statements may be required.** The territorial auditor may require, at any time, statements from any company doing business in this territory, or any of their officers and agents, on such points as he may deem necessary to elicit a full exhibit of its business and standing. (*As amended, Id.* § 18.)

*§ 510*s*. **Statements to be verified and published.** The statements required under this act must be verified by the signature and oath of the president or vice-president, with those of the secretary or actuary, or by the manager or general agent of a foreign company doing business in this territory; and it shall be the duty of the territorial auditor to cause the information contained in the statements required by this act to be arranged in tabular form and printed annually, and transmitted to the territorial legislature with his biennial report; also for distribution to the companies doing business in the territory. (*As amended, Id.* § 19.)

*§ 510*t*. **When prohibited from doing business.** No company having neglected to file the statements required from it within the time and manner prescribed, shall do any new business, after a notification by the auditor, while such neglect continues. (*As amended, Id.* § 20.)

*§ 510*u*. **Forfeiture for neglect.** Any company willfully neglecting to make and transmit any statement required by this act shall forfeit one hundred dollars for each week's delay. (*As amended, Id.* § 21.)

*§ 510*v*. **Auditor may prevent publication.** The territorial auditor has authority to prevent the publication of any part or all of the statement of any company made under this act until its annual report is made. (*As amended, Id.* § 22.)

*§ 510*w*. **Service of process on foreign corporation.** In case any insurance company not incorporated in this territory shall cease to transact business in this territory according to the laws thereof, the attorney last designated shall be deemed to continue the attorney for such corporation, for the purpose of serving papers or process for the commencement of any action or proceedings for any violation or any liability accruing on their policies while transacting business in this territory, and service of such papers in the case aforesaid upon any such attorney shall be deemed valid and personal service upon such corporation. (*As amended, Id.* § 23.)

See pages 849–851.

*§ 510*y*. **Charter of foreign corporation—copy to be filed.** And every company or association shall also file a certified copy of its charter, together with a statement, under oath of the president (or vice-president) and secretary, stating the name of the company and where located, the amount of its capital, with a detailed statement of its assets, showing the amount of cash on hand, in bank, or in the hands of agents; the amount of real estate, and how much the same is incumbered by mortgage; the number of shares of stock of every kind owned by the company; the par and market value of the same; amount loaned on bond or mortgage; the amount loaned on other security, stating the kind and the amount loaned on each, and the estimated value of the whole amount of such securities and other assets or property of the company; also stating the indebtedness of the company; the amount of losses adjusted and unpaid; the amount incurred and in process of adjustment; the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; also a report of the last annual report, if any, made under the laws of the state or county, and under which such company was incorporated. And no agent shall be allowed to transact business for any such company, whose capital is impaired to the extent of twenty per cent. thereof, while such deficiency continues. (*As amended, Id.* § 24.)

*§ 510*z*. **Certificate of compliance with statute essential.** It shall not be lawful for any agent or agents to act for any company or companies referred to in this act, directly or indirectly, in taking risks or transacting the business of fire, cyclone, tornado, hail, and inland navigation insurance in this territory, without procuring from the territorial auditor a certificate of authority, stating that such company has complied with all the requisites of this act which apply to such company. The statements and evidences of investment required by this act shall be renewed from year to year, in such manner and form as required by this act, and the auditor, on being satisfied with the capital, securities, and investments remaining secured as hereinbefore provided, shall furnish a renewal of the certificate as aforesaid. (*As amended, Id.* § 25.)

*§ 510*aa*. **Penalty for violation of statutory provisions.** Any violation of any of the provisions of this act shall subject the party violating the same to a penalty of five hundred dollars for each viola-

tion, and to the additional sum of one hundred dollars for each month during which any such agent shall neglect to file such affidavits and statement as herein required. (*As amended, Id.* § 26.)

*§ 510*bb*. **Act applies to all foreign companies.** The provisions of this act shall apply to all foreign companies, partnerships, associations, and individuals, whether incorporated or not. All insurance companies, associations, or partnerships incorporated or organized under the laws of any other state or territory of the United States, or any foreign government, transacting the business of fire, cyclone, tornado, hail, or marine insurance, or any other kind of insurance, in this territory, shall make annual statements of their condition and affairs to the auditor, in the same manner and the same form as similar companies organized under the laws of this territory. (*As amended, Id.* § 27.)

*§ 510*cc*. **When auditor may revoke certificate.** If the auditor has or shall have, at any time after examination, reason to believe that any annual statement or other report required or authorized by this act, made or to be made out by any officer or officers, agent or agents, of any corporation, association, or partnership, incorporated by or organized under the laws of any state or territory of the United States or any foreign government, is false, it shall be the duty of said auditor to immediately revoke the certificate of authority granted on behalf of such corporation or association, and mail a copy of such revocation to such company; and the agent or agents of such corporation, association, or partnership, after such notice, shall discontinue the issuing of any new policies, or the renewal of any policy previously issued; and such revocation shall not be set aside, nor any new certificate of authority be given, until satisfactory evidence shall have been furnished to said auditor that such corporation or association is, in substance and in fact, in the condition set forth in such statement or report, and that all requirements of said act have been fully complied with. (*As amended, Id.* § 28.)

*§ 510*dd*. **Duty of auditor to examine into affairs of company.** It shall be the duty of the territorial auditor, whenever he shall deem it expedient to do so, in person or by one or more persons appointed by him for that purpose, not officers or agents of, or in any manner interested in, any insurance company doing business in this territory, except as policy-holders, to examine into the affairs of any company incorporated under this act in this territory, or companies of other states or territories or any foreign companies doing business by its agents in this territory. It shall be the duty of the officers or agents of any such company doing business in this territory to cause their books to be opened for the inspection of the auditor or persons so appointed, and to otherwise facilitate such examination, so far as it may be in their power to do, and pay all reasonable expenses incurred therein, in no case to exceed ten dollars per diem. And for that purpose the said auditor, or person or persons appointed by him, shall have the power to examine, under oath, the officers and agents of any such company, relative to the business of said company. And whenever the said auditor

shall deem it for the best interest of the public so to do, he shall publish the result of such investigation in two newspapers in this territory. (*As amended*, *Id.* § 29.)

*§ 510*ee*. **Proceedings where deficiency appears.** And whenever it shall appear to said auditor, from such examination, that the assets of any such company incorporated in this territory are insufficient to justify the continuance in business of any such company, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the district attorney, whose duty it shall be to apply to the district court of the county in which the principal office of the company shall be located, for an order requiring them to show cause why the business of such company shall not be closed; and the court shall thereupon proceed to hear the allegations and proof of the respective parties; and in case it shall appear to the satisfaction of said court that the assets and effects of said company are not sufficient, as aforesaid, and that the interests of the public so require it, the said court shall decree the dissolution of said company and a distribution of its effects. The said district court shall have the power to refer all applications for distribution to a referee, who shall inquire into and report upon the facts stated therein. Any company receiving the aforesaid requisition from such auditor shall forthwith call upon its stockholders for such amount as shall make the capital equal to the amount fixed by the charter of said company. And in case any stockholder of such company shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement in such time and manner as the auditor shall approve, it shall be lawful for said auditor to require the return of said original certificate of stock held by said stockholder, and in lieu thereof to issue new certificates for such number of shares as said stockholder may be entitled to, in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company,—the value of such shares, for which the new certificates shall be issued, to be ascertained under the direction of said auditor, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock, dispose of the same, and issue new certificates of stock to the amount sufficient to make up the original capital of the company. (*As amended*, *Id.* § 30.)

*§ 510*ff*. **Liability of stockholders for additional losses.** And it is hereby declared that in the event of any additional losses incurring upon new risks taken after expiration of the period limited by said auditor, in the aforesaid requisition for the filling up of the deficiency in the capital of said company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof. (*As amended*, *Id.* § 31.)

*§ 510*gg*. **Transfer of stock not to relieve from liability.** No transfer of the stock of any company organized under this act, made

during the pendency of any such investigation, will release the party making the transfer from his liability for the losses which may have occurred previous to the transfer. (*As amended, Id.* § 32.)

*510*hh*. **When condition unsound, certificate may be revoked.** And whenever it shall appear to said auditor, from the report of the person or persons appinted by him, that the affairs of any company not incorporated by the laws of this territory are in unsound condition, he shall revoke the certificates granted in behalf of said company, and shall cause a notification thereof to be published in any newspaper of general circulation published at the capital, and mail a copy thereof to each agent of the company. The agent or agents of such company shall, after such notice, be required to discontinue the issuing of new policies and the renewal of any policies previously issued. (*As amended, Id.* § 33.)

*§ 510*ii*. **Suits for penalties.** Every penalty provided for by this act shall be sued for and recovered in the name of the territory by the district attorney in whose jurisdiction the company, or agent, or agents so violating shall be doing business, and one-half of all such penalties shall be paid, when recovered, into the treasury of said county, and the other half to the informer; and in case of the non-payment of such penalties, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof. (*As amended, Id.* § 34.)

*§ 510*jj*. **Duration of company—control of legislature.** All companies incorporated or extended under this act may provide in their charter for not more than thirty years' duration, but the legislature may at any time alter or amend this act, and provide for the closing up of the business and affairs of any company formed under it. Nothing herein contained shall be so construed as to prevent the subsequent extension of the charter of companies organized or extended under this act. (*As amended, Id.* § 35.)

See pages 852–855.

*§ 510*ll*. **Stock impaired—reduction of capital.** Whenever it shall appear to the territorial auditor, from examination made by him, in the manner prescribed by law, that the capital stock of any company organized under this act is impaired to an amount exceeding twenty per cent. of such capital, and he shall be of the opinion that the interests of the public will not be prejudiced by permitting such company to continue business with the reduced capital, it shall be lawful for such company, with the permission of the said auditor, to reduce its capital stock, and the par value of the shares thereof, to such amount as the said auditor may, under his hand and seal, certify to be proper, and as shall, in his opinion, be justified by the assets and property of such company: *provided*, that no part of such assets and property shall be distributed to the stockholders: *provided, further*, that the capital stock of any such company shall not be reduced to an amount less than the sum now required by law for the organization of a new company, under the general insur-

ance laws, for the transaction of business at the place where such a company is located, and of the kind which said company is authorized to transact. No reduction of the capital of any such company shall be made except upon a resolution of the board of directors, approved by at least two-thirds of the directors, certified under its corporate seal, signed by the president and at least two-thirds of the directors, and proved or acknowledged in the manner required by law for the proof or acknowledgment of conveyances, which certificate shall be filed in the office of said auditor before any action shall be had by him thereon. The territorial auditor, in case he shall permit any such company to reduce its capital in the manner provided in this act, shall execute the certificate required by this act in duplicate, and deliver one of said certificates to the officers of said company, who shall forthwith file the same with the clerk of said county in which said company is located, and the other to be filed in the office of said auditor. Such company, upon filing the certificate with the county clerk as required by this act, shall, with such reduced capital, possess the same rights and be subject to the same liabilities as it possessed and was subject to at the time of the reduction of its capital, and the charter of such company shall be deemed to be amended in all respects to the amount of capital, and par value of the shares, so as to conform to the reduction. It shall be lawful for the said company to require the return of the original certificate of stock held by each stockholder, [and] in lieu thereof to issue new certificates for such number of shares as each stockholder may be entitled to, in the proportion that the reduced capital may be found to bear to the original capital of the company. It shall be lawful for any such company, after its capital shall be so reduced as aforesaid, to increase its capital stock in the manner prescribed by this act. (*As amended*, *Id.* § 36.)

*§ 510*mm*. **Receivers to make annual statements.** It shall be the duty of all receivers of insurance companies, on or before the first day of March of each year, and at any other time, when required by the territorial auditor, to make and to file, annually, their statements of their assets and liabilities, and of their income and expenditures, in the same manner and form, and under the same penalties, as the officers of such companies are now required by law to make annual and other statements to the auditor. (*As amended*, *Id.* § 37.)

*§ 510*nn*. **Annual statements to be published.** And the said auditor shall also require its annual statement, required to be filed by this act, to be published, in conformity with the provisions of section sixteen of this act. (*As amended*, *Id.* § 38.)

*§ 510*oo*. **Fees.** There shall be paid by every company, association, person or persons, or agent, doing business in this territory, to whom this act shall apply, the following fees: Upon filing declaration, or certified copy of charter, twenty-five dollars. Upon filing the annual statement, ten dollars. For each certificate of authority, and certified copy thereof, two dollars. For every copy of any paper filed in the department, the sum of twenty cents per folio; and for fixing official seal

to such copy, and certifying the same, the sum of one dollar. For official examinations of companies under this act, the actual expense incurred, not to exceed ten dollars *per diem*. And companies organized under the laws of this territory shall pay the following fees: For filing and examination of the first application of any company, and the issuing of the certificates of license thereon, ten dollars. For filing each annual statement, and the issuing renewal of license required by law, three dollars. For each certificate of authority to its agents, fifty cents: *Provided*, that the net amount of all fees over and above the cost of performing the clerical labor connected therewith shall not exceed, under this act, the sum of two thousand dollars, and that any amount above that sum shall be paid over to the territorial treasurer for the general fund of the territory. (*As amended*, *Id.* § 39.)

*§ 510*pp*. **Taxes.** Every insurance company doing business in this territory, except in joint-stock and mutual companies, organized under the laws of this territory, shall, at the time of making the annual statement, as required by law, pay into the [territorial] *state* treasury, as taxes, two and a half per cent. of the gross amount of premiums received in this territory during the preceding year, taking duplicate receipts therefor, one of which shall be filed with the auditor; and upon filing of said receipts—not until then—the said auditor shall issue the annual certificate as provided by law; and the said sum of two and a half per cent. shall be in full of all taxes, state [territorial] and local. (*As amended*, *Id.* § 40.)

See pages 855, 856.

*§ 510*rr*. **Companies formed on the mutual plan.** No company, formed under this act for the purpose of doing the business of insurance on the mutual plan, shall commence business within this territory, nor establish agencies for the transaction of business within this territory, until agreements have been entered into for insurance with at least one hundred applicants, the premiums of which shall amount to not less than fifty thousand dollars, of which ten thousand dollars, at least, shall have been paid in cash, and notes of solvent parties, founded on actual and *bona fide* applications for insurance, shall have been received for the remainder; and no one of the notes received as aforesaid shall amount to more than two hundred dollars, and no two shall be given for the same risk, or be made by the same person or firm, except where the whole amounts of such notes shall not be more than two hundred dollars; nor shall any such note be represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company, upon a risk which shall not be for a shorter period than twelve months. Each of said notes shall be payable, in part or in whole, at any time when the directors shall deem the same requisite for payment of any loss, and such incidental expenses as may be necessary for the transaction of said business. And no note shall be and appear as a help to said capital stock, unless the same shall be accompanied by a certificate of the register of deeds or clerk of the district court of the

county where the person making such note shall reside, that the person making the note is, in his opinion, pecuniarily good and responsible for the same; and no such note shall be surrendered during the life-time of the policy for which it was given. (*As amended*, *Id.* § 41.)

*§ 510*ss*. **Agents responsible—embezzlement by.** Agents appointed by any company doing business in this territory, to solicit for applications for insurance, collect the premiums on the same, and transact other duties of agents in such cases, shall be held personally responsible to such company for any money received by them for such company; and, in case any such agent shall embezzle or fraudulently convert to his own use, or shall take or secrete the same with the intent to embezzle and convert to his own use, without the consent of such company, any money belonging to such company, which shall come into his possession, or shall be under his care by virtue of his agency, he shall be deemed, by so doing, to have committed the crime of larceny, and, on conviction, shall be subject to the fine and penalties provided by the statutes in such cases. (*As amended*, *Id.* § 42.)

*§ 510*ss*^{1}. **Statutes of other states—retaliatory provisions.** When, by the laws of any state or territory, any taxes, fines, penalties, licenses, fees, deposits of moneys or securities, or capital requirements, or other obligations or prohibitions, are imposed, or would be imposed, on insurance companies of this territory, doing, or that might seek to do, business in such state or territory, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such state or territory doing business within this territory, or upon their agents here. (*As amended*, *Id.* § 43.)

*§ 510*ss*^{2}. **Companies heretofore organized — annual statements.** All insurance companies heretofore organized in the territory of Dakota, and now doing business in this territory, shall be required to make the annual statement provided for and required by companies formed or organized under this act. But this shall not be construed to interfere with, or in any manner abridge, the rights and privileges of any company already in existence, or doing business under any law now or heretofore existing in the territory. (*As amended*, *Id.* § 44.)

*§ 510*ss*^{3}. **Location of principal office—change of.** It shall be lawful for any insurance company to change the location of its principal office to any place within the territory of Dakota, by a majority vote of the stock of said company, and said company shall also publish a notice of such change of location for three consecutive months immediately thereafter, in some newspaper of general circulation published in said territory; a copy of which notice must be filed with the auditor of the territory. (*As amended*, *Id.* § 45.)

*§ 510*ss*^{4}. **Repealing clause.** All of chapter sixty-nine of the Civil Code, with the amendments thereto, regulating insurance companies and the business of insurance, is hereby repealed: *provided*, that nothing

contained in this act shall prevent the complete organization of any insurance company under the laws heretofore in force, where the declaration of intention to form and the charter of such insurance company was filed in the office of the auditor of said territory at the time of the passage of this act. (*Id.* § 46.)

*§ 510*ss*⁵. **To what companies not to apply.** This act shall not apply to the organization, duties, or powers of county mutual insurance companies. (*Id.* § 47.)

See page 857.

County Mutual Insurance Companies.

*§ 510*vv*. **Who may incorporate.** It shall be lawful for any number of persons, not less than twenty-five, residing in any county in this territory, who collectively shall own property of not less than twenty-five thousand dollars in value, which they desire to have insured, to form themselves into a company for mutual insurance against loss or damage by fire or lightning, hail and tornado; which corporation shall possess the usual powers and be subject to the usual duties of corporations; and the corporate name thereof shall embrace the name of the county in which the business office of the said company shall be located. (*Sess. Laws* 1885, *c.* 70, § 1.)

*§ 510*ww*. **Directors to be chosen.** Every company so formed shall choose of their number not less than five nor more than nine directors to manage the affairs of such company, who shall hold their office for one year, or until others are elected; and such directors shall choose one of their members president, vice-president, secretary, and treasurer. Said treasurer shall give such bond as may be required by the board of directors of said company. (*Id.* § 2.)

*§ 510*xx*. **Duty of directors.** The directors of such company shall file their articles of association, together with a copy of their by-laws, and the names of the officers of such company, in the office of the county clerk of the county in which such company is located, and shall keep a record of their proceedings, in a book kept for that purpose, together with the names of all persons insured, and the amount each person is insured, which record shall be kept open for the inspection of all the members of such company, at the office of the secretary. (*Id.* § 3.)

*§ 510*yy*. **Issuance of policies.** The directors of such company may issue policies, signed by the president and secretary, agreeing in the name of the company to pay all loss or damage, by fire or lightning, for a term not exceeding five years, by the holders of such policies, and not exceeding the sum named in such policy. (*Id.* § 4.)

*§ 510*zz*. **Duty of party insured.** Every person so insured shall give his undertaking, bearing even date with the policy so issued to him, binding himself, his heirs and assigns, to pay his *pro rata* share to the company of all losses or damages, by fire or lightning, hail and tornado, which may be sustained by any member thereof; and every such undertaking shall, within five days after the execution thereof, be filed with

the secretary, in the office of said company, and shall remain on file in such office except when required to be produced in court as evidence. He shall also, at the time of effecting such insurance, pay such percentage in cash, and such reasonable sum for a policy, as may be required by the rules and by-laws of the company. (*Id.* § 5.)

*§ 510*aaa*. **Members of company.** Every member of such company, who may sustain loss or damage by fire or lightning, shall immediately notify the president of such company, or, in case of his absence, the secretary thereof, who shall forthwith convene the directors of such company, whose duty it shall be to appoint a committee of not less than three nor more than five members of such company, to ascertain the amount of such loss; and, in case of the inability of the parties to agree upon the amount of such damages, the claimant may appeal to the probate judge of the county in which the company is situated, whose duty it shall be to appoint three disinterested persons as a committee of reference, who shall have full authority to examine witnesses, and to determine all matters in dispute; who shall make their award to the president in writing, or, in his absence, to the secretary of such company, which award thereon shall be final. The said committee of reference shall each be allowed the sum of two dollars per day, for each day's services so rendered, and the sum of five cents per mile for every mile necessarily traveled in the discharge of such duties, which shall be paid by the claimant, unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expenses shall be paid by the company. (*Id.* § 6.)

*§ 510*bbb*. **Classification of property insured.** The companies, under the provisions of the act, may classify the property insured, at the time of issuing the policies thereon, under different rates, corresponding, as nearly as may be, to the greater or less risk from fire and loss which may attach to each several buildings or personal property insured, or damage by hail or tornado. Whenever the amount of any loss shall be ascertained, the president shall convene the directors of said company, who shall make an assessment upon all property insured, taken in connection with the rate of premium under which it may have been classified. (*Id.* § 7.)

*§ 510*ccc*. **Assessment—duty of secretary.** It shall be the duty of the secretary, whenever such assessment shall have been completed, to immediately notify every person composing such company, by letter sent to his usual post-office address, of the amount of such loss, the sum due from him as his share thereof, and of the time when and to whom such payment is to be made; but such time shall not be less than thirty nor more than sixty days from the date of such notice, and the person designated to have such money, by the directors, may demand not to exceed two per cent. in addition to the amount due on each assessment, as aforesaid, for his fees in securing and paying over the same. (*Id.* § 8.)

*§ 510*ddd*. **Suits against members.** Suits at law may be brought against any member of such company who shall refuse or neglect to pay any assessment made upon them by the provisions of this act, and the directors of any company so formed, who shall willfully neglect or refuse to perform the duties imposed upon them by the foregoing sections of this act, shall be liable in their individual capacity to the persons sustaining such loss. (*Id.* § 9.)

*§ 510*eee*. **Property not insurable.** No company formed under the provisions of this act shall insure any property outside the limits of the county in which said company is located, nor shall they insure any property other than detached dwellings and their contents, and farm buildings and their contents, and live-stock when on the premises or running at large, and hay or grain in the bin or stack, and growing grain, against damage by hail or tornado; nor shall they insure any property within the limits of any incorporated city in the territory. (*Id.* § 10.)

*§ 510*fff*. **Directors, how and when chosen.** The directors of each company so formed shall be chosen by ballot at the annual meeting thereof, which shall be held on the first Tuesday in January of each year, and every person shall have one vote for each two hundred dollars which he may be insured; but no person shall be allowed to vote by proxy at such election. (*Id.* § 11.)

*§ 510*ggg*. **Statement to be prepared by secretary.** It shall be the duty of the secretary of every company, as aforesaid, to prepare a statement showing the condition of such company on the day preceding the annual meeting, which statement shall contain the amount insured, the number of policies issued, and to whom, and the amount insured by each policy, and all other matters pertaining to the interests of such company; which statements shall be filed in the office of the county clerk of the county in which such company is located, on or before the fifteenth day of January in each year, and which statement shall also be read to the members at their annual meeting. (*Id.* § 12.)

*§ 510*hhh*. **Withdrawal from membership.** Any member of such company may withdraw therefrom at any time, by giving notice in writing to the president, or, in his absence, to the secretary thereof, and paying his share of all claims then existing against said company; and the directors, or a majority thereof, shall have power to annul any policy, by giving notice in writing to the holder thereof. (*Id.* § 13.)

*§ 510*iii*. **Non-residents may become members.** Non-residents of any county in this territory, owning property therein, may become members of any company founded under this act, and shall be entitled to all rights and privileges appertaining thereto, except that it shall not be lawful for such non-residents to become a director in said company. (*Id.* § 14.)

*§ 510*jjj*. **By-laws of company.** The company so formed may adopt such by-laws for its regulation as are not inconsistent with the

provisions of this act, and may therein prescribe the compensation of its officers. (*Id.* § 15.)

*§ 510*kkk*. **Term of existence.** No company formed under this act shall continue for a longer term than thirty years. (*Id.* § 16.)

*§ 510*lll*. **Repealing clause.** All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (*Id.* § 17.)

See page 858.

ARTICLE XII.—MINING AND MANUFACTURING CORPORATIONS.

§ 515. **Annual report—contents.** Amended by striking out the following words where they occur in said section: "And if any such corporation shall fail so to do, the directors shall be jointly and severally liable for all debts of the corporation then existing, and for all that shall be contracted before such report shall be made;" and inserting instead thereof as follows: "Any person who willfully neglects, fails, or refuses to make, sign, or publish the report as provided in this section shall be guilty of a misdemeanor." (*Sess. Laws* 1885, *c.* 38, § 1.)

See page 858.

ARTICLE XVII.—DUTIES OF FOREIGN CORPORATIONS.

§ 569. **Resident agent to accept service.** Amended by inserting the words, "and register of deeds of the county where said agent resides," immediately after the word "territory," where said word last occurs in said section, and by inserting the words "or register of deeds" immediately after the word "secretary," where said word last occurs in said section. (*Sess. Laws* 1885, *c.* 36, § 1.)

ARTICLE XVIII.—BUILDING AND LOAN ASSOCIATIONS.

*§ 569*a*. **Charter.** At any time when ten or more persons may desire to form a building and loan association under the provisions of this act, they shall make application to the secretary of the territory in the manner prescribed by the tenth section of this act. The said secretary is hereby fully empowered to grant charters to said associations, provided that no charter granted under or by virtue of the provisions of this act shall be for a longer period than twenty years. (*Sess. Laws* 1885, *c.* 34, § 1.)

*§ 569*b*. **Capital stock.** The capital stock of any corporation created by virtue of this act shall at no time consist of more than two thousand five hundred shares of two hundred dollars each; the installments on which stock are to be paid at such time and place as the by-laws shall appoint. No periodical payment to be made exceeding two dollars on each share. Every share of stock shall be subject to a lien for the payment of unpaid installments and other charges incurred thereon, under the provisions of the charter and by-laws, and the by-laws may prescribe the form and manner of enforcing such lien. New shares

of stock may be issued in lieu of the shares withdrawn or forfeited. The stock may be issued in one or successive series, in such amount as the board of directors or stockholders may determine, and any stockholder wishing to withdraw from the said corporation shall have power to do so by giving thirty days' notice of his or her intention to withdraw, when he or she shall be entitled to receive the amount paid in by him or her, and such proportion of the profits as the by-laws may determine, less all fines and other charges: *provided*, that at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors, and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security. Upon the death of a stockholder, his or her legal representative shall be entitled to receive the full amount paid in by him or her, and legal interest thereon, first deducting all charges that may be due on the stock. No fines shall be charged to a deceased member's account from or after his or her decease, unless the legal representatives of such decedent assume the future payments on the stock. (*Id.* § 2.)

*§ 569*c*. **By-laws to contain.** The number, titles, functions, and compensation of the officers of any corporation created by virtue of this act, their terms of office, the times of their election, as well as the qualifications of electors, and the votes and manner of voting, and the periodical meetings of said corporation, shall be determined by the by-laws. (*Id.* § 3.)

*§ 569*d*. **Loaning funds.** The said officers shall hold stated meetings, at which the money in the treasury, if over two hundred dollars, shall be offered for loan in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan shall be entitled to receive a loan of two hundred dollars for each share of stock held by such stockholder: *provided*, that good and ample security shall be given by the borrower to secure the repayment of the loan. In case the borrower shall neglect to offer security, or shall offer security that is not approved by the board of directors by such time as the by-laws may prescribe, he or she shall be charged with one month's interest, at the rate charged by the association on loans, and a fine not to exceed one dollar per share, together with any expenses incurred, and the money shall be resold at the next stated meeting. In case of non-payment of installments, or interest, or premium by borrowing stockholder for the space of six months, payment of principal and interest, without deducting the premium paid or interest thereon, may be enforced by proceeding on their securities according to law. (*Id.* § 4.)

*§ 569*e*. **Payment of loans.** A borrower may repay a loan at any time by the payment to the corporation of the principal sum borrowed, together with interest not to exceed twelve per cent. per annum, together with such per cent. of premium per annum as may have been bid for the preference or priority of such loan, and any fines or charges that may be imposed upon such stockholder at the time of such repay-

ment; or in case the amount of premium bid for the priority of such loan be deducted in advance, and the repayment thereof is made before the expiration of the eighth year after the organization of the corporation, there shall be refunded to such borrower one-eighth of the premium paid for every year of the said eight years unexpired: *provided*, that when the stock is issued in separate series, the time shall be computed from the date of the issuing of the shares of stock on which the loan was made. (*Id.* § 5.)

*§ 569*f*. **Interest not usurious.** No premiums, fines, or interest on such premiums that may accrue to the said corporation according to the provisions of this act shall be deemed usurious; and the same may be collected as debts of like amount are now by law collected in this territory. (*Id.* § 6.)

*§ 569*g*. **Neglect not to affect life of corporation.** No corporation created under this act shall cease or expire from neglect on the part of the corporation to elect officers at the time mentioned in their charter or by-laws, and all officers elected by such corporation shall hold their offices until their successors are duly elected and qualified. (*Id.* § 7.)

*§ 569*h*. **May purchase at sheriff's sale.** Any building or loan association incorporated by or under the provisions of this act, or any one heretofore incorporated accepting of the provisions of the same, is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, judgment, lien, or other incumbrance, or in which said association may have an interest; and the real estate so purchased, or any other that such association may hold, or be entitled to at the passage of this act, to sell, convey, lease, or mortgage at pleasure to any person or persons whatsoever; and all sales of real estate heretofore made by such association to any person or persons not members of the association so selling, are hereby confirmed and made valid. (*Id.* § 8.)

*§ 569*i*. **Validating securities.** All mortgages heretofore given to building and loan associations organized under the laws of this territory before the passage of this act, but such associations subsequently accepting the provisions hereof, be, and the same are hereby, declared good and valid to all intents and purposes, as though they had been made to corporations organized under the provisions of this act. (*Id.* § 9.)

*§ 569*j*. **Mode of incorporation.** The charter of an intended corporation under the provisions of this act must be subscribed by ten or more persons, a majority of whom must be citizens of this territory, and set forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal office, or the business to be transacted.

4. The time for which it is to exist.

5. The names and residences of the subscribers, and the number of shares subscribed by each.

6. The number of its directors, and the names and residences of those who are selected as directors, and who shall hold their office until the next annual election, or until their successors are elected and qualified.

7. The amount of its capital stock, and the number and par value of its shares. (*Id.* § 10.)

*§ 569*k*. **Public notice.** Notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation printed in the proper county for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor. The certificate for a corporation under the provisions of this act shall set forth all that is hereinbefore required to be set forth, the same shall be acknowledged by at least five of the subscribers thereto before a notary public or other officer authorized to administer oaths, and they shall also make and subscribe an oath or affirmation before him, to be indorsed on said certificate, that the statements contained therein are true. The said certificate, accompanied with proof of publication of the notice as hereinbefore provided, shall then be produced to the secretary of the territory, who shall examine the same, and, if he find it to be in proper form, as specified in the foregoing sections, he shall approve thereof, and indorse his approval thereon, and issue letters patent in the usual form incorporating the subscribers and their associates and successors into a body politic and corporate, in deed and in law, by the manner chosen, and the said certificate shall be recorded in the office of the secretary of the territory, in a book to be by him kept for that purpose, and a certified copy of the said certificate shall be recorded in the office of the register of deeds of the county where the principal business of the association is transacted. Certified copies of the records thereof shall be competent evidence for all purposes in the several courts of this territory. (*Id.* § 11.)

*§ 569*l*. **By-laws.** The by-laws of every corporation created under the provisions of this act, or of those accepting the provisions of the same, shall be deemed and taken as its law, subordinates to this statute. They shall be made by the stockholders, or the board of directors, at their annual meeting, or at any stated meeting of the board of directors. They shall prescribe the time and place of meeting of the corporation, the power and duty of its officials, the fines and penalties to be imposed upon delinquents and borrowers for the non-payment of dues, interest, and premiums, and such other matters as may be pertinent and necessary for the business to be transacted. (*Id.* § 12.)

*§ 569*m*. **Business—how managed.** The business of every corporation created hereunder, or of those accepting the provisions of the same, shall be managed and conducted by a president, a board of directors or trustees, a secretary and treasurer, and such other officers or agents as the by-laws may provide. The directors or trustees shall be

elected annually by the stockholders, or members, at the time fixed by the by-laws, and shall hold their office until others are chosen and qualified in their stead; the manner of such choice, and of the choice or appointment of all other agents or officers, shall be prescribed by the by-laws. The number of directors or trustees shall not be less than five, one of whom shall be chosen president by the directors, or by the members of the corporation, as the by-laws may direct. The members of said corporation may, at a meeting called for that purpose, determine, fix, or change the number of directors or trustees that shall thereafter govern its officers, and a majority of the whole number of such directors or trustees shall be necessary to constitute a quorum. The treasurer shall give bond in such sum, and with such sureties, as shall be required by the by-laws, for the faithful discharge of his duties, and he shall keep the moneys of the corporation in a separate bank account, to his credit as treasurer, and if he shall neglect or refuse to so do; he shall be liable to a penalty of fifty dollars for every day he should fail to do so, to be recovered at the suit of any informer in an action of debt. (*Id.* § 13.)

*§ 569*n*. **Stock certificates.** The directors of such corporation shall procure certificates or evidences of stock, and shall deliver them, signed by the president and secretary, and sealed with the common seal of the corporation, to each person or party entitled to receive the same, according to the number of shares by him, her, or them respectively held, which certificate or evidence of stock shall be transferable at the pleasure of the holder in person, or by attorney duly authorized, as the by-laws may prescribe, subject, however, to all payments due or to become due thereon; and the assignee or party to whom the same shall have been so transferred shall be a member of said corporation, and have and enjoy all the immunities, privileges, and franchises, and be subject to all the liabilities, conditions, and penalties, incident thereto, in the same manner as the original subscriber or holder would have been; but no certificate shall be transferred so long as the holder is indebted to said company, unless the board of directors shall consent thereto. (*Id.* § 14.)

*§ 569*o*. **Oath of officer.** No person acting as judge or officer for holding an election for any such corporation shall enter upon the duties of his appointment until he take and subscribe an oath or affirmation before a notary public, or other person qualified by law to administer oaths, that he will discharge the duties of his office with fidelity; that he will not receive any rate but such as he really believes to be legal; and if any such judge or officer shall knowingly or willfully violate his oath or affirmation, he shall be subject to all the penalties imposed by law upon the officers of the general election of this territory for violating their duties, and shall be proceeded against in like manner and with like effect. (*Id.* § 15.)

*§ 569*p*. **Vacancies.** In case of the death, removal, or resignation of the president, or of any of the directors, secretary, treasurer, or other officer of such company, the remaining directors may supply the vacancy thus created until the next general election. (*Id.* § 16.)

*§ 569*q*. **Lawful to receive premiums.** It shall be lawful for any building and loan association now incorporated under the general laws of this territory and accepting the provisions of this act, or that may hereafter be incorporated, in addition to dues and interest, to charge and receive the premiums or bonus bid by a stockholder for preference or priority of right to a loan in periodical installments; and such premium or bonus so paid in installments shall not be deemed usurious, but shall be taken to be a payment, as it falls due, in contradistinction to a premium charged and paid in advance; in so far as said premium or bonus so charged and paid, in addition to dues and interest, shall be in excess of two dollars for each periodical payment, the same shall be lawful, any law, usage, or custom to the contrary notwithstanding: *provided*, that the certificate of incorporation of each association hereafter to be incorporated, and the certificate provided in section nineteen of this act for those heretofore incorporated, shall set forth whether the premium or bonus bid for the prior rights to a loan shall be deducted therefrom in advance or paid in periodical installments. (*Id.* § 17.)

*§ 559*r*. **Withdrawal of stock.** The by-laws of such association may provide for the voluntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on: *provided*, that such withdrawal and cancellation shall be *pro rata* among the shares of the same series of stock: and, *provided further*, that not less than twelve per cent. per annum shall be credited and allowed to each share so withdrawn and canceled. (*Id.* § 18.)

*§ 569*s*. **When entitled to privileges of this act.** Any building and loan association heretofore incorporated under the provisions of any law of the territory shall be entitled to all the privileges and immunities, franchises, and powers, conferred by this act, upon filing with the secretary of the territory a certificate, to be by him recorded as provided in section eleven of this act, of their acceptance of the same, in writing, under the duly-authenticated seal of the said association, which certificate shall also prescribe their mode or plan of charging premiums or bonus for priority of loan as set forth in section seventeen of this act, and upon such acceptance and approval thereof by the secretary of the territory he shall issue his certificate to said corporation reciting the same. (*Id.* § 19.)

See page 871.

PART IV.

ACQUISITION OF PROPERTY.

TITLE IV.

TRANSFER.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE III.—PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 656. **Within judicial district.** The proof or acknowledgment of an instrument may be made in this territory within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before either—

1. A judge or clerk of a court of record; or,
2. A mayor of a city; or,
3. A register of deeds; or,
4. A justice of the peace; or,
5. A United States circuit or district court commissioner; or,
6. A county clerk; or,
7. A county auditor. (*As amended, Sess. Laws* 1885, *c.* 1, § 1.)

See page 887.

DIVISION THIRD.

OBLIGATIONS.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

TITLE XI.

INSURANCE.

CHAPTER I.

INSURANCE IN GENERAL.

*§ 1475*a*. **Territorial property.** The property of this territory shall not be insured. (*Sess. Laws* 1885, *c.* 9, § 13.)

See page 1028.

TITLE XIV.

LIEN.

CHAPTER VI.

OTHER LIENS.

*§ 1814*k*. **Owner of stallion or bull may have lien.** Amended by striking out the word "ten" where it occurs in said section, and inserting in lieu thereof the word "ninety." (*Sess. Laws* 1885, *c.* 112, § 1.)

See page 1081.

DIVISION FOURTH.

GENERAL PROVISIONS.

PART I.

RELIEF.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER II.

DAMAGES FOR WRONGS.

§ 1970. **Conversion of personalty.** Subd. 1 amended so as to read as follows: "1. The value of property at the time of the conversion, with the interest from that time, or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party: and," (*As amended, Sess. Laws* 1885, *c.* 42, § 1.)

See page 1110.

PART V.

DEFINITION AND GENERAL PROVISIONS.

§ 2115. **Holidays.** Amended by inserting after the word "December," in the third line of said section, the following words, "the thirtieth day of May." (*Sess. Laws* 1885, *c.* 88, § 1.)

See page 1133.

PENAL CODE.

CHAPTER V.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

*§ 95*a*. **Voting at primary election.** It shall be unlawful for any person not a qualified elector of the ward or election precinct in which any caucus or primary meeting is held, having for its object, either immediately or ultimately, the nomination or selection of any delegate or candidate for any public office, to be voted on at any election in this territory, to vote in any manner or on any question which may come before such caucus or primary meeting. Any person who shall violate the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished according to law. (*Sess. Laws* 1885, *c.* 28, § 1.)

See page 1150.

CHAPTER XXXVIII.

CRIMES AGAINST PUBLIC HEALTH AND SAFETY.

*§ 474*a*. **Sale of diseased or unwholesome provisions.** Whoever sells diseased, corrupted, or unwholesome provisions for food or drink, knowing it to be such, without informing the buyer, or fraudulently adulterates, for the purpose of sale, any substance intended for food or drink, so as to render them injurious to health, shall be punished by imprisonment for not more than five years, or by a fine not exceeding one thousand dollars; and whoever kills or causes to be killed for the purpose of sale any calf less than four weeks old, or knowingly sells, or has in possession with intent to sell, for food, the meat of any calf killed when less than four weeks old, shall be punished by imprisonment in the jail or house of correction not exceeding thirty days, or by fine not exceeding fifty dollars, or both; and all such meat exposed for sale, or kept with intent to sell, may be seized and destroyed by any board of health or health officer, or any sheriff, deputy-sheriff, constable, or police officer. (*Sess. Laws* 1885, *c.* 64, § 1.)

*§ 474*b*. **Warrant for search for unwholesome food.** When complaint is made on oath, to any court or justice of the peace authorized to issue warrants in criminal cases, that meat of calves killed when less than four weeks old is kept or concealed with intent to sell the same for purposes of food, such magistrate, when satisfied that there is reasonable cause for such belief, may issue a warrant to search therefor. (*Id.* § 2.)

*§ 474*c*. **Compound in imitation of cheese or butter.** Whoever, by himself or by his agent, sells, exposes for sale, or has in his possession with intent to sell, any article, substance, or compound made in imitation of cheese or butter, or as a substitute for cheese or butter, and not made exclusively and wholly of milk or cream, or containing any fats, oils, or grease not produced from milk or cream, shall have the words "imitation cheese," or "adulterated butter," or, if such substitute is the compound known as oleomargarine, then the word "oleomargarine," stamped, labeled, or marked in printed letters of plain Roman type, not less than one inch in length, so that said words cannot be easily defaced, upon the side of every cheese cloth or band around the same, and upon the top and side of every tub, firkin, box, or package containing any of said article, substance, or compound. And in case of retail sales of any of said articles, substances, or compounds not in the original packages, the seller shall attach to each package so sold, and deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of said package the words "imitation cheese," "adulterated butter," or "oleomargarine," as herein provided, in printed letters of plain Roman type, not less than half an inch in length. (*Id.* § 3.)

*§ 474*d*. **Same—penalty.** Whoever sells, exposes for sale, or has in his possession with intent to sell, any article, substance, or compound made in imitation or semblance of cheese or butter, or as a substitute for cheese or butter, except as provided in the preceding section; and whoever defaces, erases, cancels, or removes any mark, stamp, brand, label, or wrapper provided for by the preceding section, or changes the contents of any box, tub, article, or package marked, stamped, or labeled, as aforesaid, with intention to deceive as to the contents thereof, for the first offense forfeits one hundred, and for the second and every subsequent offense, two hundred dollars, to be recovered by indictment, with costs. (*Id.* § 4.)

*§ 474*e*. **Duties of officers.** Every health officer, sheriff, deputy-sheriff, or constable shall institute complaint for the violations of the two preceding sections whenever he has reasonable cause for suspicion; and, on the information of any person who shall lay before him satisfactory evidence of the same, said officer shall take specimens of suspected butter or cheese, and cause the same to be analyzed, or otherwise satisfactorily tested. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be included in the costs of prosecution, and taxed and allowed to the officer paying the same. (*Id.* § 5.)

*§ 474*f*. **Butter and cheese defined.** For the purposes of the three preceding sections, the terms "butter" and "cheese" mean the products usually known by those names, and which are manufactured exclusively from milk or cream, or both, with salt and rennet, and with or without coloring matter. (*Id.* § 6.)

See page 1214.

CHAPTER LIII.

FRAUDS IN THE SALE OF PASSAGE TICKETS.

*§ 676*a*. **Right to deal in passage tickets.** Any person having an established place of business in any village, town, or city within this territory, shall have the right to buy, sell, and exchange passage tickets, or other evidences of a right of passage from one place to another, upon any railroad line or steam-boat line and their connections that said tickets may have been regularly issued over and for. (*Sess Laws.* 1885, *c.* 122, § 1.)

*§ 676*b*. **Purchasers may sell.** Any person purchasing a ticket from the authorized office of any line for the transportation of passengers, shall have the right to sell his ticket or tickets to any person doing business under this act: *provided*, that nothing in this act shall be construed to prevent any incorporated village, town, or city to regulate this business by any law deemed necessary for the protection of the public. (*Id.* § 2.)

*§ 676*c*. **Repeal—acts in conflict repealed.** That all acts or parts of acts conflicting with the provisions of this act be, and the same are hereby, repealed. (*Id.* § 3.)

See page 1249.

CHAPTER LVII.

MISCELLANEOUS CRIMES.

*§ 727*a*. **Sale prohibited within three miles of university.** It shall not be lawful for any person, by himself, agent, or otherwise, to sell in any quantities intoxicating liquors at any place, room, building, or premises within three miles of the Dakota University, in the city of Vermillion, county of Clay; and no license to sell liquors within said limits shall be issued by the authorities of either the county of Clay or the city of Vermillion: *provided, however*, this act shall not be so construed as to prohibit any druggist from selling liquors for medicinal or mechanical purposes. (*Sess. Laws* 1885, *c.* 150, § 1.)

*§ 727*b*. **Purchaser from druggist, duty of.** Every person buying liquors for medicinal or mechanical purposes shall sign his name

in a book to be kept by each druggist in said city for that purpose. (*Id.* § 2.)

*§ 727*c*. **Punishment for violation of act.** Every person selling intoxicating liquors in violation of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than three hundred dollars for the first offense, and not less than three hundred dollars for the second offense, and each and every offense thereafter, or by imprisonment in the county jail not less than thirty days for the first offense, and not less than sixty days for the second offense, or by both such fine and imprisonment, in the discretion of the court. (*Id.* § 3.)

*§ 727*d*. **Distance, how ascertained.** For the purpose of calculating and ascertaining the distance of said three miles from said Dakota University, the starting point shall be the middle point of the east front line of the main building of said university, at the surface of the ground, as said building now stands. (*Id.* § 4.)

*§ 727*e*. **Giving away is unlawful.** The giving away of intoxicating liquors, or any other shift or device to evade the provisions of this act, shall be deemed and held to be an unlawful selling within the provisions of the same. (*Id.* § 5.)

*§ 727*f*. **Fines, disposal of.** All fines collected under the provisions of this act shall be paid over to the county treasurer to the credit of the general school fund of the county of Clay, and all property, real and personal, except that absolutely exempt, belonging to the person convicted, and all furniture, liquors, glasses, bottles, kegs, and barrels in the custody of any person so selling intoxicating liquors, shall be liable to seizure and sale to pay any fine against such person so selling intoxicating liquors. (*Id.* § 6.)

*§ 727*g*. **Effect of act.** This act shall take effect and be in force from and after the first day of July, A. D. eighteen hundred and eighty-five. (*Id.* § 7.)

*§ 727*h*. **Sale or license, where prohibited.** It shall not be lawful to sell or to license the sale of intoxicating liquors to be sold within one mile of that part of the villages of Iroquois and Denver, lying in the county of Kingsbury, in the territory of Dakota, at any time or during which no license is granted in said county. Any license granted contrary to the provisions of this act shall be void, and any person violating the provisions hereof shall be subject to the prosecution provided for, and penalties imposed by the laws now or hereafter in force on the subject of intoxicating liquors, and the general laws shall apply whenever applicable for the enforcement of the provisions of this act. (*Sp. Laws* 1885, *c.* 49, § 1.)

See page 1258.

*§ 729*d*. **Unlawful to sell opium without permit.** It shall be unlawful for any person, by himself, by agent, or otherwise, to either

directly or indirectly sell or give away opium, or any other commodity of which opium is an ingredient, unless the person so selling or giving away the said articles has a written permit or license from the authorities of the city or town in which such person carries on business, or from the board of county commissioners of the county wherein said person resides, in case he does not carry on business in any city or town, and unless the person to whom opium or other articles are sold or given away shall obtain and present to the person selling the same a prescription for the said articles, in writing, signed by a reputable practicing physician (*Sess. Laws* 1885, *c.* 121, § 1.)

*§ 729*e*. **Unlawful to smoke opium.** It shall be unlawful for any person to smoke opium, or any commodity whatever of which opium is an ingredient. (*Id.* § 2.)

*§ 729*f*. **Unlawful to allow premises to be used for opium smoking.** It shall be unlawful for any person owning or having in charge or possession any room, building, cellar, or other place or premises, to permit opium, or any commodity of which opium is an ingredient, to be smoked in, upon, or about such place or premises. (*Id.* § 3.)

*§ 729*g*. **Penalty.** Any person violating the provisions of sections one, two, or three of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment. (*Id.* § 4.)

*§ 729*h*. **Places used for opium smoking a nuisance.** Any room, building, cellar, or other place or premises used or permitted to be used for smoking of opium, or any commodity of which opium is an ingredient, shall be considered and is hereby declared a public nuisance; and the district court, or the judge thereof, may at any time, upon satisfactory proof that the smoking or use of opium is permitted or carried on in any such premises, order and cause such premises to be abated as a public nuisance. (*Id.* § 5.)

*§ 729*i*. **Jurisdiction.** Justices of the peace shall have concurrent jurisdiction with the district court to hear, try, and determine any case arising under this act within their county. It is hereby made the especial duty of all ministerial officers to enter complaint in each case of the violation of this act, and they are hereby required to ascertain by inquiry and examination as to any such violations. (*Id.* § 6.)

See page 1259.

CHAPTER LVIII.

GENERAL PROVISIONS.

§ 759. **Imprisonment for life.** The last sentence of section seven hundred and fifty-nine of the Penal Code, in the words following, to-wit, "But no person can in any case be sentenced to imprisonment in the territorial prison for any term less than one year," is hereby repealed, and said sentence is stricken out of said section. (*Sess. Laws* 1885, *c.* 67, § 1.)

See page 1265.

CHAPTER LIX.

MEDICAL PROFESSION.

* * * * * * * *

*§ 4. **Practice of medicine and surgery.** No person shall be permitted to practice medicine in any of its departments in this territory, unless he be a graduate of a medical college, or unless, upon examination before a board, composed of the superintendent of public health and two other physicians, to be selected by the territorial board of health, such person shall be found proficient in the practice of medicine and surgery, and shall also be found, upon proof, to have been actually engaged in the practice of medicine for a term of not less than ten years; and no person shall practice medicine unless he be of good moral character, and is not a habitual drunkard. Any person possessing the qualifications mentioned in this section shall, upon presentation of his diploma, or of proof thereof by affidavit, if the same is lost or destroyed, and upon the affidavit of two reputable citizens, from the county where he resides, that such applicant possesses the qualifications of a physician as prescribed herein, to the superintendent of public health, together with a fee of two dollars, receive from such superintendent of public health a license certifying the applicant to be a practicing physician, and having the qualifications for such prescribed by this section, which license shall be recorded in the office of the register of deeds in the county where such practicing physician resides. Any person who practices medicine, or attempts to practice medicine, without complying with the provisions of this section, shall be deemed guilty of a misdemeanor; and any person shall be regarded as practicing medicine, within the meaning of this section, who shall profess publicly to be a physician, and to prescribe for the sick, or who appends to his name the letters "M. D.;" but nothing in this section shall be construed to prohibit students from prescribing, under the supervision of preceptors, or to prohibit gratuitous services in case of emergency; nor shall this section ap-

ply to commissioned surgeons in the United States army and navy. Any person violating any of the provisions of this act, or who shall prevent, or attempt to prevent, the several officers of the public health, or persons employed by them, from performing any of the duties prescribed in this act to be performed by any such officer, or any practicing physician who shall fail to report to the county superintendent of health the existence of any contagious or infectious disease, and any person who shall willfully conceal any case of contagious or infectious disease, either among persons or animals, shall be deemed guilty of a misdemeanor. The district court shall, upon the complaint of any member of the territorial board of health, or the county board of health where he resides, have power to cancel any license that may be issued to any person to practice medicine, where such license was fraudulently obtained, or where the person to whom such license was issued has been guilty of violating any of the provisions of this act. (*Sess. Laws* 1885, *c.* 63, § 14.)

DENTAL SURGERY.

*§ 5. **Regulation of dental surgery.** It shall be unlawful for any person to engage in the practice of dentistry in this territory unless he or she shall have obtained a certificate as herein provided. (*Sess. Laws* 1885, *c.* 43, § 1.)

*§ 6. **Board of examiners.** A board of examiners, to consist of five practicing dentists, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of said board shall be appointed by the governor, who shall select them from ten candidates, whose names shall be furnished him by the South Dakota Dental Society and the Northwestern Dental Association. Each shall furnish the names of five candidates, and the governor shall select at least two, from each five names so furnished, to be members of said board. The term for which the members of said board shall hold their offices shall be five years, except that the members of the board first to be appointed under this act shall hold their offices for the term of one, two, three, four, and five years, respectively, and until their successors shall be duly appointed. In case of a vacancy occurring in said board, such vacancy shall be filled by the governor from names presented to him by the Northwestern Dental Association and the South Dakota Dental Society. It shall be the duty of the said dental organizations to present twice the number of names to the governor of those to be appointed. (*Id.* § 2.)

*§ 7. **Officers of board.** Said board shall choose one of the members president, and one the secretary thereof, and it shall meet at least once in each year, and as much oftener, and at such times and places, as it may deem necessary. A majority of said board shall at all times constitute a quorum, and the proceedings thereof shall at all reasonable times be open to public inspection. (*Id.* § 3.)

*§ 8. **Duty of persons engaged in practice of dentistry.** Within six months from the time this act takes effect, it shall be the

duty of every person who is at that time engaged in the practice of dentistry in this territory, to cause his or her name and residence or place of business to be registered with said board of examiners, who shall keep a book for that purpose. The statement of every such person shall be verified under oath before a notary public or justice of the peace, in such manner as may be prescribed by the board of examiners. Every person who shall so register with said board as a practitioner of dentistry may continue to practice the same as such without incurring any of the liabilities or penalties provided in this act, and shall pay to the board of examiners for such registration a fee of one dollar. It shall be the duty of the board of examiners to forward to the register of deeds of each county in the territory a certified list of the names of all persons residing in his county who have registered in accordance with the provisions of this act; and it shall be the duty of all registers of deeds to register such names in a book to be kept for that purpose. (*Id.* § 4.)

*§ 9. **Examination before board.** Any and all persons who shall so desire may appear before said board at any of its regular meetings, and be examined with reference to their knowledge and skill in dental surgery; and if the examination of any such person or persons shall prove satisfactory to said board, the board of examiners shall issue to such persons as they shall find to possess the requisite qualifications, a certificate to that effect, in accordance with the provisions of this act. Said board shall also indorse as satisfactory diplomas from any reputable dental college, when satisfied with the character of such institution, upon the holder of such diploma furnishing evidence satisfactory to the board of his or her right to the same. All certificates issued by said board shall be signed by its officers, and such certificate shall be *prima facie* evidence of the right of the holder to practice dentistry in the territory of Dakota. (*Id.* § 5.)

*§ 10. **Misdemeanor—penalty.** Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction may be fined not less than fifty dollars or more than two hundred dollars, or be confined six months in the county jail. All fines received under this act shall be paid into the common-school fund of the county in which such conviction takes place. (*Id.* § 6.)

*§ 11. **Charges for examination of applicants.** In order to provide the means for carrying out and maintaining the provisions of this act, the said board of examiners may charge each person applying to or appearing before them for examination, for a certificate of qualification, a fee of two dollars, which fee shall in no case be returned; and out of the funds coming into the possession of the board, from the fees so charged, the members of said board may receive, as compensation, the sum of five dollars for each day actually engaged in the duties of their office, and all legitimate and necessary expenses incurred in attending the meetings of said board. Said expenses shall be paid from the fees and penalties received by the board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the

territorial treasury. All moneys received in excess of said *per diem* allowance and other expenses, as above provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of said board and carrying out the provisions of this act, he giving such bonds as the board shall from time to time direct. And said board shall make an annual report of its proceedings to the governor by the fifteenth of December of each year, together with an account of all moneys received and disbursed by them pursuant to this act. (*Id.* § 7.)

*§ 12. **Certificate to be registered.** Any person who shall receive a certificate of qualification from said board shall cause his or her certificate to be registered with the register of deeds of any county or counties in which such person may desire to engage in the practice of dentistry, and the registers of deeds of the several counties in this territory shall charge for registering such certificates a fee of twenty-five cents for such registration. Any failure, neglect, or refusal on the part of any person holding such certificate to register the same with the register of deeds, as above directed, for a period of six months, shall work a forfeiture of the certificate, and no certificate when once forfeited shall be restored, except upon the payment to the said board of examiners of the sum of twenty-five dollars as a penalty for such neglect, failure, or refusal. (*Id.* § 8.)

*§ 13. **Misdemeanor—false claim to certificate, diploma, etc.** Any person who shall knowingly and falsely claim or pretend to have or hold a certificate of license, diploma, or degree granted by any society, or who shall falsely, and with intent to deceive the public, claim or pretend to be a graduate from any incorporated dental college, not being such graduate, shall be deemed guilty of a misdemeanor, and shall be liable to the same penalty as provided in section 6 of this act. (*Id.* § 9.)

See page 1269.

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CODE OF CRIMINAL PROCEDURE.

TITLE V.

PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

CHAPTER II.

FORMATION OF THE GRAND JURY.

§ 163. **Grand jury defined.** A grand jury as [is] a body of men consisting of not less than sixteen nor more than twenty-three jurors, impaneled and sworn to inquire into and true presentments make of all public offenses against the territory committed or triable within the county or subdivision for which the court is holden. (*As amended, Sess. Laws* 1885, *c.* 62, § 2.)

See page 1298.

TITLE VIII.

PROCEEDINGS AFTER COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

CHAPTER IV.

THE VERDICT.

*§ 393*a*. **Designation of punishment.** Amended by adding thereto at the close thereof the following: "but upon a plea of guilty the court shall determine the same." (*Sess. Laws* 1885, *c.* 29, § 1.)

See page 1332.

CHAPTER V.

BILLS OF EXCEPTIONS.

§ 416. **Judge to settle and sign.** Amended by adding thereto the following proviso: "*Provided, however*, if the judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply, by petition, to the supreme court to prove the same. The application may be made in the mode and manner and under such regulations as that court may prescribe; and the bill, when proven, must be certified by a justice thereof as correct, and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause." (*Sess. Laws* 1885, *c.* 20, § 1.)

See page 1336.

CHAPTER VI.

NEW TRIALS.

§ 423. **Power of court to grant.** Amended by adding thereto subd. 7: "When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial, when a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and, if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable." (*Sess. Laws* 1885, *c.* 115, § 1.)

§ 424. **Application, when to be made.** The application for a new trial must be made before judgment, but the court, or judge thereof, may, upon good cause shown, allow such application to be made at any time within thirty days after the entry of such judgment. And motions for a new trial on the ground of newly-discovered evidence may be made after judgment at the term in which the cause is tried, or during vacation, before the court or judge thereof, at any time before the next succeeding term or at such term. (*Id.* § 2.)

See page 1337.

TITLE XI.

MISCELLANEOUS PROCEEDINGS.

CHAPTER IX.

OF BAIL.

§ 553. **Bail, when may be admitted.** Bail, by sufficient sureties, may be admitted upon all arrests in criminal cases where the punishment may be death, unless the proof is evident or the presumption great; and in such cases it shall be taken only by the supreme court or a district court, or by a justice or judge thereof, who shall exercise their discretion therein, having regard to the nature and circumstances of the offense, and of the evidence, and to the usages of law; but if the case has been tried by jury, and the jury have disagreed on their verdict, then the above presumption is removed, and the defendant shall thereupon be entitled to bail, unless it shall appear to the court or judge thereof, by due proof, that such disagreement was occasioned by the misconduct of the jury. (*As amended, Sess. Laws* 1885, *c.* 19, § 1.)

See page 1359.

TITLE XII.

DEPOSITIONS IN CRIMINAL CASES.

CHAPTER I.

BEFORE OR AFTER INDICTMENT.

*§ 1. **Examination of witnesses conditionally.** When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment or information, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise. (*Sess. Laws* 1885, *c.* 44, § 1.)

*§ 2. **When order of examination may be applied for.** When a material witness for the defendant is about to leave the territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally. (*Id.* § 2.)

*§ 3. **Affidavit, what to state.** The application must be made upon affidavit, stating:

1. The nature of the offense charged.
2. The state of the proceedings in the action.
3. The name and residence of the witness, and that his testimony is material to the defense of the action.
4. That the witness is about to leave the territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial. (*Id.* § 3.)

*§ 4. **Notice of application.** The application may be made to the court, or to a judge thereof, and must be made upon five days' notice to the district attorney. (*Id.* § 4.)

*§ 5. **Order for examination—service of.** If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the district attorney within a specified time before that fixed for the examination. (*Id.* § 5.)

*§ 6. **Order to direct.** The order must direct that the examination be taken before a magistrate named therein; and on proof being furnished to such magistrate of service upon the district attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed. (*Id.* § 6.)

*§ 7. **Examination, when to proceed.** If the district attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the territory, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed. (*Id.* § 7.)

*§ 8. **Attendance—subpœna.** The attendance of the witness may be enforced by a subpœna, issued by the magistrate before whom the examination is to be taken, or from the court where the trial is to be had. (*Id.* § 8.)

*§ 9. **Testimony must be written—authentication.** The testimony given by the witness must be reduced to writing. The magistrate before whom the examination is had, may, in his discretion, order the testimony and proceedings to be taken down in short-hand, and for that purpose he may appoint a short-hand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession.

2. It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth; except, in case where the testimony is taken down in short-hand, the answer or answers of the witness need not be read to him.

3. If a question be objected to on either side, and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled, or the answer declined, must be stated.

4. The deposition must be signed by the witness, or, if he refuses to sign it, his reasons for refusing must be stated in writing as he gives it; except, in cases where the deposition is taken down in short-hand, it must not be signed by the witness.

5. It must be signed and certified by the magistrate when reduced to writing by him or under his direction, and when taken down in short-hand, the manuscript of the reporter, appointed as aforesaid, when written out in long-hand writing, and certified as being a correct statement of such testimony and proceedings in the case, shall be *prima facie* a correct statement of such testimony and proceedings. The reporter shall, within five days after the close of such examination, transcribe into long-hand writing his said short-hand notes, and certify and deliver the same to the magistrate, who shall also certify the same, and transmit such testimony and proceedings, carefully sealed up, to the clerk of the court in which the action is pending or may come for trial. (*Id.* § 9.)

*§ 9. [10.] **Deposition may be read on trial.** The deposition, or certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the territory. Upon reading the depositions in evidence the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in court. (*Id.* § 9.)

*§ 10. [11.] **Witness when prisoner under criminal charge.** When a material witness for a defendant, under a criminal charge, is a prisoner in a territorial prison, or in a county jail of a county other than that in which the defendant is to be tried, his deposition may be taken on behalf of the defendant in the manner provided for in the case of a witness who is sick, and the foregoing provisions of this chapter, so far as they are applicable, govern in the application for, and in the taking and use of, such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated; or, in case the witness is confined in a territorial prison, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of trustees of the prison, whose duty it shall be to act without compensation. Every officer, before whom testimony shall be taken by virtue hereof, shall have authority to administer and shall administer an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth. (*Id.* § 10.)

CHAPTER II.

AFTER ISSUE OF FACT JOINED.

*§ 1. **Witness residing out of territory.** When an issue of fact is joined upon an indictment or information, the defendant may have any material witness residing out of the territory examined in his behalf, as prescribed in this chapter, and not otherwise. (*Sess. Laws* 1885, *c.* 44, § 1.)

*§ 2. **Examination on commission.** When a material witness for the defendant resides out of the territory, the defendant may apply for an order that the witness be examined on a commission, to be issued under the seal of the court, and the signature of the clerk, directed to some party designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, and to take and certify the deposition of the witness, and return it, according to the instructions given, with the commission. (*Id.* § 2.)

§ 3. **Affidavit, what to state.** Application must be made upon affidavit, stating:

1. The nature of the offense charged.
2. The state of the proceedings in the action, and that an issue of fact has been joined therein.
3. The name of the witness, and that his testimony is material to the defense of the action.
4. That the witness resides out of the territory. (*Id.* § 3.)

§ 4. **Application, to whom made.** The application may be made to the court or the judge thereof, and must be upon five days' notice to the district attorney. (*Id.* § 4.)

§ 5. **Order to issue commission.** If the court or judge, to whom the application is made, is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and the court or judge may insert in the order a direction that the trial be stayed for a specified time, reasonably sufficient for the execution of the commission and return thereof, or the case may be continued. (*Id.* § 5.)

§ 6. **Copy of interrogatories to be served.** When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, with three days' notice of the time at which they will be presented to the court or judge. The district attorney may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with like notice. In the interrogatories either party may insert any question pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge according to the notice, the court or judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his alterations, and annex them to the commission. (*Id.* § 6.)

*§ 7. **Indorsement on commission.** Unless the parties otherwise consent by an indorsement upon the commission, the court or judge must indorse thereon the direction and manner in which it must be returned, and may, in his *direction*, [discretion,] direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept. (*Id.* § 7.)

*§ 8. **Commission, how executed.** The commissioner, unless otherwise specially directed, may execute the commission as follows:

1. He must administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.
2. He must cause the examination of the witness to be reduced to writing and subscribed by him.
3. He must write the answers of the witness as nearly as possible in the language in which he gives them, and read to him each answer so taken down, and correct or add to it until it conforms to what he declares is the truth.
4. If the witness declines to answer a question, that fact, with the reason assigned by him for declining, must be stated.
5. If any papers or documents are produced before him, and proved by the witness, they or copies of them must be annexed to the deposition, subscribed by the witness, and certified by the commissioner.
6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon.
7. If there be direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post-office. If any other directions be made by the written consent of the parties, or by the court or judge, or the commissioner, as to its return, the commissioner must comply with the directions. (*Id.* § 8.)

[*§ 8.] A copy of this section [*§ 7] must be annexed to the commission. (*Id.* § 8.)

*§ 9. **Return of commission.** If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it. (*Id.* § 9.)

*§ 10. **By whom received.** If the agent is dead, or, from sickness or other cause, unable personally to deliver the commission and

return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or, from sickness or other casualty, unable to deliver it, and it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner. (*Id.* § 10.)

*§ 11. **To be filed—transmission by mail.** The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment or information is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post-office, and open and file it in his office, where it must remain, unless otherwise directed by the court. (*Id.* § 11.)

*§ 12. **To be open to public inspection.** The commission and return must at all times be open to the inspection of all persons, who must be furnished by the clerk with a copy of the same, or any part thereof, on payment of his fees. (*Id.* § 12.)

*§ 13. **May be read in evidence on the trial.** Depositions taken under a commission may be read in evidence by either party on the trial, upon its being shown that the witness is unable to attend, from any cause whatever; and the same objections may be taken to a question in the interrogatories, or to the answers in the deposition, as if the witness had been examined orally in court. (*Id.* § 13.)

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